Assembly
California Legislature

ASSEMBLY COMMITTEE ON
PUBLIC SAFETY
REGINALD BYRON JONES-SAWYER, SR., CHAIR
ASSEMBLYMEMBER, FIFTY-NINTH DISTRICT

AGENDA

9:00 a.m. – April 4, 2017
State Capitol, Room 126

Item	Bill No. & Author	Counsel/ Consultant	Summary
1.	AB 320 (Cooley)	Mr. Smith	Child Advocacy Centers.
2.	AB 662 (Choi)	Ms. Uribe	Restitution: tracking.
3.	AB 702 (Lackey)	Mr. Caswell	Driving under the influence: chemical tests.
4.	AB 720 (Eggman)	Mr. Billingsley	Inmates: psychiatric medication: informed consent.
5.	AB 728 (Waldron)	Ms. Anderson	Crimes ineligible for expungement: elder abuse.
6.	AB 730 (Quirk)	Ms. Anderson	Transit districts: prohibition orders.
7.	AB 736 (Gipson)	Mr. Caswell	Firearms: dealer licensing.
8.	AB 748 (Ting)	Mr. Pagan	Peace officers: body-worn cameras.
9.	AB 757 (Melendez)	Mr. Pagan	Firearms: concealed carry licenses.
10.	AB 1091 (Quirk)	Ms. Anderson	Balloons: electrically conductive material.
11.	AB 1098 (McCarty)	Mr. Pagan	Child death investigations: review teams.

12.	AB 1114 (Eduardo Garcia)	Mr. Smith	Supervised Population Workforce Training Grant Program.
13.	AB 1115 (Jones-Sawyer)	Ms. Uribe	Convictions: expungement.
14.	AB 1120 (Cooper)	Mr. Billingsley	Controlled substances: butane.
15.	AB 1161 (Ting)	Mr. Smith	Hate crimes: law enforcement policies.
16.	AB 1206 (Bocanegra)	Mr. Caswell	PULLED BY AUTHOR.
17.	AB 1320 (Bonta)	Ms. Uribe	State prisons: private, for-profit administration services.
18.	AB 1339 (Cunningham)	Ms. Anderson	Public employment: background investigations.
19.	AB 1475 (Cervantes)	Ms. Uribe	Vehicle theft: enhancement.
20.	AB 1525 (Baker)	Mr. Caswell	Firearms warnings.
21.	AB 1559 (Eduardo Garcia)	Mr. Smith	Community engagement: gun violence prevention: grants.
22.	AB 1639 (Eduardo Garcia)	Ms. Uribe	Crime victims: the California Victim Compensation Board.

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Date of Hearing: April 4, 2017
Consultant: Adam Smith

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 320 (Cooley) – As Amended March 20, 2017

SUMMARY: Authorizes counties to create Child Advocacy Centers in order to create and to facilitate multidisciplinary responses to child abuse. Specifically, **this bill**:

1) Authorizes counties to utilize a Child Advocacy Center (CAC) in order to implement coordinated multidisciplinary responses to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment.

2) Requires any county that utilizes a CAC to coordinate its multidisciplinary response to meet the following standards:

   a) The multidisciplinary team must have at least one representative from each of the following disciplines: law enforcement, child protective services, district attorney's office, medical providers, mental health providers, victim advocate, or a representative of the CAC. Members of the multidisciplinary team may fill more than one role as needed;

   b) The multidisciplinary team, as utilized through the CAC, shall have cultural competency and diversity training to meet the needs of the community it serves;

   c) The CAC shall have a designated legal entity responsible for the governance of its operations. This entity shall oversee ongoing business practices of the CAC, including setting and implementing administrative policies, hiring and managing personnel, obtaining funding, supervising program and fiscal operations, and long-term planning;

   d) The CAC shall provide a dedicated child-focused setting designed to provide a safe, comfortable and neutral place where forensic interviews and other CAC services can be appropriately provided for children and families;

   e) The CAC shall produce written protocols for case review and case review procedures. Additionally, the Center shall use a case tracking system to provide information on essential demographics and case information;

   f) The CAC shall verify that members of the multidisciplinary team responsible for medical evaluations have specific training in child abuse or child sexual abuse examinations;

   g) The CAC shall verify that members of the multidisciplinary team responsible for mental health services are trained in, and deliver, trauma-focused, evidence supported, mental health treatments; and

h) The CAC shall verify that interviews conducted in the course of investigations are conducted in a forensically sound manner and occur in a child-focused setting designed to provide a safe, comfortable and dedicated for children and families.

3) Provides that counties are not limited to utilizing one CAC.

4) Authorizes a multidisciplinary team at a CAC to share with other multidisciplinary team members any information or records concerning the child and family and the person who is the subject of the investigation of suspected child abuse or neglect for the sole purpose of facilitating a forensic interview or case discussion or providing services to the child or family; provided, however, that the shared information or records shall be treated as privileged and confidential to the extent required by law by the receiving multidisciplinary team members.

5) Creates the following legislative findings and declarations:

a) Perpetration of child abuse and neglect is detrimental to children;

b) All victims of child abuse or neglect deserve to be treated with dignity, respect, courtesy, and sensitivity as a matter of high public importance;

c) In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case should consider the needs of the child victim and do whatever is necessary to prevent psychological harm to the child and ensure that children disclosing abuse are not further victimized by the intervention systems designed to protect them;

d) A multidisciplinary approach to investigating child abuse and neglect is associated with less anxiety, fewer interviews, and increased support for the child, as well as interagency collaboration, coordination, intervention, and sharing of information;

e) A multidisciplinary response to allegations of child abuse and neglect has been found most effective and least traumatic when coordinated through a children's advocacy center; and

f) The use of multidisciplinary teams and the establishment of children's advocacy centers throughout the State of California is necessary to coordinate investigation and prosecution of child abuse and neglect and to facilitate treatment referrals.

6) Adds child forensic interviewers and other personnel formally engaged with or employed by a CAC to the list of personnel that may make up a "child abuse multidisciplinary team."

7) Adds CACs to the list of provider agencies that may share confidential information through a child abuse multidisciplinary team.

EXISTING LAW:

1) States the legislative intent that the law enforcement agencies and the county welfare or probation department in each county shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases. (Pen. Code, § 11166.3, subd. (a).)

2) Requires the local law enforcement agency having jurisdiction over a mandated child abuse or neglect case, as specified, shall report to the county welfare or probation department that it is investigating the case within 36 hours after starting its investigation. (Pen. Code § 11166.3, subd. (a).)

3) Requires the county welfare department or probation department, in cases where a minor is a victim of child molestation, as specified, and a dependency petition has been filed with regard to the minor, to evaluate what action or actions would be in the best interest of the child victim. (Pen. Code § 11166.3, subd. (a).)

4) Provides notwithstanding any other provision of law, the county welfare department or probation department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel. (Pen. Code § 11166.3, subd. (a).)

5) Mandates a local law enforcement agency having jurisdiction over a reported child abuse or neglect case to report to the district office of the State Department of Social Services any case reported under this section if the case involves a specified facility and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency. (Pen. Code § 11166.3, subd. (b).)

6) Mandates the Department of Justice, in cooperation with the State Department of Social Services, to prescribe by regulation guidelines for the investigation of child abuse or neglect, as defined, in facilities licensed to care for children. (Pen. Code § 11174.1, subd. (a).)

7) Authorizes members of a multidisciplinary personnel team engaged in the prevention, identification, and treatment of child abuse to disclose and exchange information and writings to and with one another relating to any incidents of child abuse that may also be part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information reasonably believes it is generally relevant to the prevention, identification or treatment of child abuse. (Welf. and Inst. Code, § 830.)

8) Provides that counties may establish child abuse multidisciplinary personnel teams within that county to allow provider agencies to share confidential information in order for provider agencies to investigate reports of suspected child abuse and neglect, as specified, or for the purpose of child welfare agencies making a detention determination. (Welf. & Inst. Code, § 18961.7, subd. (a).)

9) Defines "multidisciplinary personnel" as any team of two or more persons who are trained in the prevention, identification, and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse. The team may include but not be limited to:

   a) Psychiatrists, psychologists or other trained counseling personnel;

   b) Police officers or other law enforcement agents;

c) Medical personnel with sufficient training to provide health services;

d) Social workers with training or experience in child abuse prevention; and,

e) Any public or private school teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee. (Welf. & Inst. Code, § 18961.7, subd. (b)(1).)

10) Defines "provider agency" as any governmental or other agency that has as one of its purposes the prevention, identification, management, or treatment of child abuse or neglect. The provider agencies serving children and their families that may share information shall include, but not be limited to the following entities or agencies:

a) Social services;

b) Children's services;

c) Health services;

d) Mental health services;

e) Probation;

f) Law enforcement; and,

g) Schools. (Welf. & Inst. Code, § 18961.7, subd. (b)(2).)

11) Provides that notwithstanding any other provision of law, during a 30-day period, or longer if good cause exists following a report of suspected child abuse or neglect, members of a child abuse multidisciplinary team engaged in the prevention, identification, and treatment of child abuse may disclose to, and exchange with one another information and writing that relate to any incident of child abuse that may also be designated as confidential if the member of that team having that information or writing reasonably believes it is generally relevant to the prevention, identification, and treatment of child abuse. Any discussion relative to the disclosure or exchange of the information or writings during a team meeting is confidential, and notwithstanding any other provision of law, testimony concerning that discussion is not admissible in any criminal, civil, or juvenile court proceeding. (Welf. & Inst. Code, § 18961.7, subd. (c)(1).)

12) States that all information and records communicated or provided to the team members by all providers agencies, as well as information and records created in the course of a child abuse or neglect investigation, shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. Existing civil and criminal penalties shall apply to the inappropriate disclosure of information held by team members. (Welf. & Inst. Code, § 18961.7, subd. (h).)

13) Provides that any county may establish a computerized data base system within that county to allow provider agencies, as defined, to share specified identifying information regarding

families at risk for child abuse and neglect, for the purposes of forming multidisciplinary personnel teams. (Welf. & Inst. Code, § 18961.5, subd. (a).)

14) Provides that no employee of a provider agency which serves children and their families shall be civilly or criminally liable for furnishing or sharing information, as specified. (Welf. & Inst. Code, § 18961.5, subd. (g).)

15) Authorizes each county to establish an interagency child death review team to assist local agencies in identifying and reviewing suspicious child death and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. (Pen. Code § 11174.32, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In 2015, California had 500,976 reports (allegations) of child abuse and neglect in California. Of those, 74,327, or 15%, were substantiated (verified) by the state child welfare system. Children ages 0-5 make up nearly half of all substantiated cases of child abuse/neglect in California. Statewide, child abuse and neglect cases disproportionately involve children of color.

   "CACs are tasked with coordinating the multi-agency response required when an allegation of abuse or neglect is made involving a child or adult with developmental disability. CACs bring together a multi-disciplinary team including law enforcement, child protection, medical, mental health providers and district attorneys to e3nsure that any response to an allegation of child abuse is coordinated among these agencies and that the needs of the child stay at the forefront of all investigations. Interviews are conducted in child friendly environments by forensically trained staff so that a child is not re-traumatized by multiple, inconsistent interviews from different agencies.

   "CACs provide a crucial role in helping to protect children when they are at their most vulnerable after abuse or neglect has occurred. Further, they help parents and caregivers navigate services and providers to help abused children receive the care and treatment they need.

   "AB 320 creates a statutory definition of what a CAC is and what duties it generally performs within a county. This definition will help CACs draw down federal dollars for services. Without a definition in place, there is a concern that other agencies in California may call themselves 'CACs' and draw down this funding without actually performing the work that children's advocacy centers do. Because CACs do not receive any other source of stable state funding in California, being able to fully access available federal funds, is vital to the continued advancement of CAC's in California and their ability to serve California's most vulnerable Children."

2) **Existing Authority to Create Multidisciplinary Teams**: Counties are currently permitted to create advocacy centers and multidisciplinary agreements without the express authority in this proposed bill. While this bill would codify some additional guidelines and requirements, the Welfare and Institutions Code already authorizes multidisciplinary teams to investigate instances of child abuse. In addition, CACs and multidisciplinary teams can currently receive

accreditation through the National Children's Alliance which requires each child advocacy program to meet specified standards for the composition of members, medical evaluations, mental health and forensic interviews. [*National Children's Alliance Standards for Accredited Members* <http://www.nationalchildrensalliance.org/index.php?s=76> (as of February 28, 2017).]

3) **Governor's Veto Message**: SB 1352 (Corbett), of the 2011-2012 Legislative Session, proposed substantially similar language regarding the authorization of counties to create CACs and interagency protocol agreements. According to the Governor's veto message, "Currently 33 counties in the state have established CACs, indicating that state prescription in this area is unnecessary. More to the point, this bill would lock into statute specific requirements for these centers that may not fit with what the local county leaders see as the best way to handle these sensitive cases. A "one-size-fits-all" approach goes against the goals of the Child Welfare Services Realignment, which was designed to give counties flexibility to tailor programs as they deem appropriate." (Governor's veto message to Sen. On Sen. Bill No. 1352 (2011-2012 Reg. Sess.)(July 3, 2012). AB 320 would create restrictions and requirements that would not be as strict as the requirements proposed in SB 1352 but may limit flexibility of county leaders nonetheless.

4) **Argument in Support**: According to the *Los Angeles County Professional Peace Officers Association*, "No single agency, working alone, can be expected to possess the expertise required to effectively eliminate all child abuse and neglect fatalities. Responsibility for protecting children must be shared among many sectors of the community, all working together, to strengthen prevention and early intervention, surveillance, CPS intervention, and cross-system collaboration. We strongly support the principles behind AB 320 to build coordination and collaboration between county agencies."

5) **Argument in Opposition**: According to the *California Right to Life Committee*, "CRLC questions why there is a need for a California sponsored bill to allow a county to authorize a Child Advocacy Center. According to the National Children's Alliance there are presently 67 centers listed as California Advocacy Centers with 40% of our counties presently members of the NCA. Those California centers which have received accreditation number 21.

"CRLC questions whether this is a strategy for receiving grant monies from the National Children's Alliance. The NAC works with the Children's Advocacy Centers of California in a coalition, and the NAC provides training and national accreditation along with grant monies.

"Would AB 320 now require that the non-profit and non-governmental child advocacy centers become accredited in order to function as or with a county center? Would this jeopardize their private agency status as a result of adhering to the specified standards of the bill?"

6) **Prior Legislation**:

   a) AB 406 (Torres), Chapter 7, Statutes of 2013, removed the sunset clause contained in AB 2229.

b) SB 1352 (Corbett), of the 2011-2012 Legislative Session, would have authorized each county to establish a CAC and interagency protocol agreements with similar requirements to the proposed bill. SB 1352 was vetoed by the Governor.

c) AB 2322 (Feuer), Chapter 551, Statutes of 2010, broadened the scope of information that can be included in county multidisciplinary personnel team databases and authorizes case managers from the California Work Opportunities and Responsibility to Kids program to participate on child abuse multidisciplinary personnel teams.

d) AB 2229 (Brownley), Chapter 464, Statutes of 2010, revised the definition of a "multidisciplinary personnel team" to mean any team of two or more persons created to investigate a report of suspected child abuse, as specified, and required that the sharing of information permitted in the period following a report of suspected child abuse or neglect be governed by protocols developed in each county describing how and what information may be shared to ensure that confidential information is not disclosed in violation of state or federal law.

e) SB 1279 (Pavley), Chapter 116, Statutes of 2010, authorized the County of Los Angeles to establish a pilot project to develop protocols for identifying and assessing minors, upon arrest or detention by law enforcement, who may be victims of commercial sexual exploitation, and to develop a diversion program reflecting the best practices to address the needs and requirements of those minors.

f) SB 153 (Migden), of the 2007-08 Legislative Session, would have allowed a county to enter into grants for interview services with the Office of Emergency Services for the recovery of costs associated with the provision of child victim forensic evidentiary interviews conducted by CACs. SB 153 was later amended to a different subject and vetoed.

g) SB 1761 (Poochigian), of the 2005-06 Legislative Session, would have redistributed the money in the State Penalty Fund and establish grant programs for CACs and Victim Trauma Recovery Centers. SB 1761 was held in the Senate Appropriations Committee.

h) AB 1657 (Evans), of the 2005-06 Legislative Session, would have authorized counties to establish CACs to coordinate the activities of the various agencies involved in the investigation and prosecution of alleged child abuse and mitigation of family violence, would have required each county that establishes a CAC to develop and interagency protocol agreement, as specified. AB 1657 was held in the Assembly Appropriations Committee.

i) AB 2294 (Wolk), of the 2003-04 Legislative Session, would have allowed counties to establish Multidisciplinary Interview Centers (MDICs) and submit claims to the California Victim Compensation and Government Claims Board for costs incurred by the MDICs associated with child victim forensic interviews. AB 2294 was held in the Assembly Appropriations Committee.

j) AB 1497 (Negrete-McLeod), of the 2001-02 Legislative Session, would have allowed counties to submit claims to the California Victim Compensation and Government Claims Board for costs incurred by multidisciplinary teams or centers associated with

child victim forensic interviews. AB 1497 was vetoed.

k) AB 1724 (Gallegos), of the 1999-2000 Legislative Session, would have established the Child Abuse Multidisciplinary Intervention Account, funded by the General Fund, to provide support for child abuse multidisciplinary teams and multidisciplinary centers. AB 1724 was held in the Assembly Appropriations Committee.

l) SB 647 (Rainey), of the 1999-2000 Legislative Session, would have established an account in the General Fund for local child abuse multidisciplinary teams and centers. SB 647 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:
Support

Alameda County District Attorney's Office (Co-sponsor)
Child Abuse Listening, Interviewing and Coordination Center
Harbor-UCLA K.I.D.S.
Los Angeles County Professional Peace Officers Association

Opposition

California Right to Life Committee

Analysis Prepared by: Adam Smith / PUB. S. /

Date of Hearing: April 4, 2017
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 662 (Choi) – As Amended March 29, 2017
As Proposed to be Amended in Committee

SUMMARY: Requires local collection agencies tasked with collecting victim restitution to track payments, and to notify the defendant and the victim about the status of payments. Specifically, **this bill**:

1) Requires the local collecting entity to track restitution payments.

2) Requires the local collecting entity to send monthly notices to the defendant.

3) Requires the local collecting entity to provide quarterly statements to the victim detailing the status of the restitution order.

EXISTING LAW:

1) States that, in addition to any other penalty provided or imposed under the law, the court shall order the defendant to pay both a restitution fine and restitution to the victim or victims, if any. (Pen. Code § 1202.4(a)(3).)

2) Specifies that a restitution order is enforceable by the victim as a civil judgment. (Pen. Code, §§ 1202.4, subd. (i), & 1214, subd. (b).)

3) Give counties the authority to collect court-ordered restitution from individuals under local supervision. (Pen. Code, §§ 2085.5 & 2085.6.)

4) Authorizes the agency designated by the board of supervisors in the county of incarceration to deduct 20% to 50% from the wages and trust account deposits of a county-jail inmate serving a sentence under realignment and owing a restitution fine or restitution order. (Pen. Code, § 2085.5, subds. (b)(1) & (c).)

5) Allows the agency designated by the board of supervisors in the county of incarceration to withhold an administrative fee totaling 10% of money collected to be held in a special deposit account for the purposes of reimbursing administrative and support costs of the restitution program, as specified. (Pen. Code, § 2085.5, subd. (i).)

6) Allows the agency designated by the board of supervisors to collect money from inmates released from jail after serving a sentencing under realignment who has an outstanding balance on a restitution fine or a victim restitution order. (Pen. Code, § 2085.5, subds. (g) & (h).)

7) Authorizes the agency designated by the board of supervisors to collect unsatisfied restitutions fines and victim restitution order from persons released on PRCS or mandatory supervision. (Pen. Code, § 2085.6, subds. (a) & (b).)

8) Gives the board of supervisors discretion to impose an administrative fee not to exceed 10% of the amount collected, the proceeds of which shall be deposited into the county's general fund. (Pen. Code, § 2085.6, subd. (d).)

9) Provides that any portion of a restitution fine or fee or a victim restitution order that remains unsatisfied after a defendant is no longer on probation, parole, post release community supervision (PRCS), or mandatory supervision is enforceable by the California Victim Compensation Board. (Pen. Code, § 1214, subds. (a) & (b).)

10) Allows a local collection program to continue to enforce restitution orders and fines once a defendant is no longer on probation, PRCS, or mandatory supervision. (Pen. Code, § 1214, subds. (a) & (b).)

11) Provides that fines, state or local penalties, bail, forfeitures, restitution fines, restitution orders, or any other amounts imposed by the superior court for criminal offenses can be referred to the Franchise Tax Board (FTB) for collection under guidelines prescribed by the FTB no sooner than 90 days after the payments become delinquent. (Rev. & Tax Code, § 19280.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Current law (Penal Code 2085.5 and 2085.6) calls for the collection of restitution once a victim has a restitution order.

   "However, State law is currently silent as to the tracking and noticing of such restitution payments for both the victim and the person owing the restitution.

   "AB 662 calls for a restitution notice and tracking process.

   "Tracking shall include sending monthly notices to the individual responsible for paying the restitution to the victim. Victims shall also be provided a quarterly statement delineating the repayment status of their restitution order(s).

   "AB 662 offers a means for tracking restitution and noticing both parties involved as to the payment status of the restitution order. AB 662 protects BOTH the individual owing restitution and the victim.

   "Having this mechanism in place serves both the offender and the victim so that disputes are minimized. This measure will initiate fairness for both the individual owing restitution and the victim."

2) **Collection Procedures**: There are several Penal Code provisions which provide a framework for collecting outstanding victim restitution from defendants.

Penal Code section 2085.5 is a garnishment statute which allows CDCR to deduct a percentage of the inmate's wages and trust deposits to go toward satisfying the restitution order, and the balance then goes into the inmate's account. (*Ibid.*) The statute previously applied to prisoners and parolees in the custody of CDCR.

Penal Code section 2085.5 was amended to allow the garnishment of wages and trust account deposits from realigned felons serving a sentence in county jail rather than prison. (See SB 1210 (Lieu), Chapter 762, Statutes of 2012.) Rather than CDCR garnishing the wages and trust accounts, a local agency chosen by the county board of supervisors is allowed to collect monies owed on restitution fines and victim restitution orders while the inmate is incarcerated. Similarly, Penal Code section 2085.6 authorizes collection by a local agency from persons released from prison and placed on post-release community supervision, and those released from county jail on mandatory supervision.

Another related but distinct collection statute is Penal Code section 1214. This provision permits the collection of outstanding restitution fines and fees after a defendant has been released not only from custody, but also from all forms of supervised release, including probation, PRCS, and mandatory supervision. SB 419 (Block), of the 2013-2014 legislative session, amended this statute to allow for the continued collection of outstanding restitution fines and order when a person completes a county jail term under realignment which is not followed by a term of supervision upon release.

This bill specifies that the local collecting entity must track victim restitution payment and send notices to both the defendant and the victim regarding the status of restitution payments.

3) **Argument in Support**: None submitted

4) **Related Legislation**: AB 1257 (Baker) would make restitution payments to victims of crimes the first priority for debt collected by the Franchise Tax Board. AB 1275 is pending in the Revenue and Taxation Committee.

5) **Prior Legislation**:

   a) SB 1054 (Pavley), Chapter 718, Statutes of 2016, clarified the collection process for fines and restitution by county collection agencies.

   b) SB 419 (Block), Chapter 513, Statutes of 2014, extended existing restitution collection methods to persons who have unsatisfied restitution orders and fines after serving a county jail term which is not followed by a period of supervised release.

   c) SB 1197 (Pavley), Chapter 517, Statutes of 2014, extended existing restitution collection methods to persons on post release community supervision and mandatory supervision.

   d) SB 1210 (Lieu), Chapter 762, Statutes of 2012, allowed the garnishment of wages and trust account deposits from realigned felons serving a sentence in county jail.

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United of California

Opposition

None
Analysis Prepared by: Sandy Uribe / PUB. S. /

Amended Mock-up for 2017-2018 AB-662 (Choi (A))

Mock-up based on Version Number 98 - Amended Assembly 3/29/17
Submitted by: Sandy Uribe, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. ~~Section 1230.1 of the Penal Code is amended to read:~~

~~**1230.1.** (a) Each county local Community Corrections Partnership established pursuant to subdivision (b) of Section 1230 shall recommend a local plan to the county board of supervisors for the implementation of the 2011 public safety realignment.~~

~~(b) The plan shall be voted on by an executive committee of each county's Community Corrections Partnership consisting of the chief probation officer of the county as chair, a chief of police, the sheriff, the District Attorney, the Public Defender, the presiding judge of the superior court, or his or her designee, and one department representative listed in either subparagraph (G), (H), or (J) of paragraph (2) of subdivision (b) of Section 1230, as designated by the county board of supervisors for purposes related to the development and presentation of the plan.~~

~~(c) The plan shall be deemed accepted by the county board of supervisors unless the board rejects the plan by a vote of four-fifths of the board, in which case the plan goes back to the Community Corrections Partnership for further consideration.~~

~~(d) Consistent with local needs and resources, the plan may include recommendations to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and programs, including, but not limited to, day reporting centers, drug courts, residential multiservice centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs.~~

~~(e) If a county's Community Corrections Partnership includes victim restitution programs in its local plan as authorized in subdivision (d), then the restitution shall be tracked by the sheriff's department if the individual owing restitution is still incarcerated in the county jail, or by the probation department if the individual owing restitution is on probation supervision, mandatory supervision, or postrelease community supervision. Tracking shall include sending monthly notices to the individual responsible for paying the restitution to the victim and having a collections agency continue to notice the offender if restitution is not paid per the restitution order. Victims to whom restitution is owed shall also be provided a quarterly statement detailing~~

~~the repayment status of the restitution order. Consistent with subdivision (d), each county may use a portion of its Local Revenue Fund 2011 funds, which are provided by the state to the local Community Corrections Partnership, to manage this restitution recovery program, and to set up a viable tracking and collections program to be administered or overseen by the sheriff's department or probation department of each county.~~

Section 2085.5 of the Penal Code is amended to read:

(a) If a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the secretary shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) (1) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the agency designated by the board of supervisors in a county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(2) If the board of supervisors designates the county sheriff as the collecting agency, the board of supervisors shall first obtain the concurrence of the county sheriff.

(c) If a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4 of this code, the secretary shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. The secretary shall transfer that amount to the California Victim Compensation Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(d) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section

730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law. The agency shall transfer that amount to the California Victim Compensation Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or may pay the victim directly. The sentencing court shall be provided a record of the payments made to the victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(e) **The collecting agency shall track restitution payments. Tracking shall include sending monthly notices to the individual responsible for paying restitution and quarterly statements to the victim detailing the payment status of the restitution order.**

~~(e)~~ **(f)** Except as provided in Section 2085.8, the secretary shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee to cover the actual administrative cost of collection, not to exceed 10 percent of the amount collected pursuant to subdivision (a) or (c). The secretary shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the department. The secretary, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

~~(f)~~ **(g)** Except as provided in Section 2085.8, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in a county where the prisoner is incarcerated may deduct and retain from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee to cover the actual administrative cost of collection, not to exceed 10 percent of the total amount collected, pursuant to subdivision (b) or (d). The agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the agency. The agency may retain any excess funds in the special deposit account for future reimbursement of the agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

~~(g)~~ **(h)** In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, either the secretary or, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated may collect from the parolee any moneys owing on the restitution fine amount, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

~~(h)~~ **(i)** In any case in which a parolee owes a direct order of restitution, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or paragraph (3) of subdivision (a) of Section 1202.4, either the secretary or, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated or a local collection program may collect from the parolee any moneys owing, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or the agency may pay the victim directly. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

~~(i)~~ **(j)** Except as provided in Section 2085.8, either the secretary or, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated may deduct and retain from moneys collected from parolees an administrative fee to cover the actual administrative cost of collection, not to exceed 10 percent of the total amount collected pursuant to subdivision (g) or (h), unless prohibited by federal law. The secretary or the agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the department or agency's restitution program, as applicable. The secretary, at his or her discretion, or the agency may retain any excess funds in the special deposit account for future reimbursement of the department's or agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

~~(j)~~ **(k)** If a prisoner has both a restitution fine and a restitution order from the sentencing court, the department shall collect the restitution order first pursuant to subdivision (c).

~~(k)~~ **(l)** If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and that prisoner has both a restitution fine and a restitution order from the sentencing court, if the agency designated by the board of supervisors in the county where the prisoner is incarcerated collects the fine and order, the agency shall collect the restitution order first pursuant to subdivision (d).

~~(l)~~ **(m)** If a parolee has both a restitution fine and a restitution order from the sentencing court, either the department or, if the prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated may collect the restitution order first, pursuant to subdivision (h).

~~(m)~~ **(n)** If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars ($50) for visits that include the inmate and one visitor, seventy dollars ($70) for visits that include the inmate and two or three visitors, and eighty dollars ($80) for visits that include the inmate and four or more visitors.

~~(n)~~ **(o)** (1) Amounts transferred to the California Victim Compensation Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation Board. If the restitution payment to a victim is less than twenty-five dollars ($25), then payment need not be forwarded to that victim until the payment reaches twenty-five dollars ($25) or when the victim requests payment of the lesser amount.

(2) If a victim cannot be located, the restitution revenues received by the California Victim Compensation Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.

(3) (A) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the department, which shall verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the department, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (c) or (h).

(B) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the agency designated by the board of supervisors in the county where the prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 is incarcerated, which may verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the agency, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (d) or (h).

SEC. 2. Section 2085.6 of the Penal Code is amended to read:

(a) When a prisoner who owes a restitution fine, or any portion thereof, is subsequently released from the custody of the Department of Corrections and Rehabilitation or a county jail facility, and is subject to postrelease community supervision under Section 3451 or mandatory supervision under subdivision (h) of Section 1170, he or she shall have a continuing obligation to pay the restitution fine in full. The restitution fine obligation and any portion left unsatisfied upon placement in postrelease community supervision or mandatory supervision is enforceable and may be collected, in a manner to be established by the county board of supervisors, by the department or county agency designated by the board of supervisors in the county where the prisoner is released. If a county elects to collect restitution fines, the department or county agency designated by the county board of supervisors shall transfer the amount collected to the California Victim Compensation Board for deposit in the Restitution Fund in the State Treasury.

(b) When a prisoner who owes payment for a restitution order, or any portion thereof, is released from the custody of the Department of Corrections and Rehabilitation or a county jail facility, and is subject to postrelease community supervision under Section 3451 or mandatory supervision under subdivision (h) of Section 1170, he or she shall have a continuing obligation to pay the restitution order in full. The restitution order obligation and any portion left unsatisfied

upon placement in postrelease community supervision or mandatory supervision is enforceable and may be collected, in a manner to be established by the county board of supervisors, by the agency designated by the county board of supervisors in the county where the prisoner is released. If the county elects to collect the restitution order, the agency designated by the county board of supervisors for collection shall transfer the collected amount to the California Victim Compensation for deposit in the Restitution Fund in the State Treasury or may pay the victim directly. The sentencing court shall be provided a record of payments made to the victim and of the payments deposited into the Restitution Fund.

(c) Any portion of a restitution order or restitution fine that remains unsatisfied after an individual is released from postrelease community supervision or mandatory supervision shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(d) The collecting agency shall track restitution payments. Tracking shall include sending monthly notices to the individual responsible for paying restitution and quarterly statements to the victim detailing the payment status of the restitution order.

~~(d)~~ **(e)** At its discretion, a county board of supervisors may impose a fee upon the individual subject to postrelease community supervision or mandatory supervision to cover the actual administrative cost of collecting the restitution fine and the restitution order, not to exceed 10 percent of the amount collected, the proceeds of which shall be deposited into the general fund of the county.

~~(e)~~ **(f)** If a county elects to collect both a restitution fine and a restitution order, the amount owed on the restitution order shall be collected before the restitution fine.

~~(f)~~ **(g)** If a county elects to collect restitution fines and restitution orders pursuant to this section, the county shall coordinate efforts with the Franchise Tax Board pursuant to Section 19280 of the Revenue and Taxation Code.

~~(g)~~ **(h)** Pursuant to Section 1214, the county agency selected by a county board of supervisors to collect restitution fines and restitution orders may collect restitution fines and restitution orders after an individual is no longer on postrelease community supervision or mandatory supervision or after a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170.

~~(h)~~ **(i)** For purposes of this section, the following definitions shall apply:

(1) "Restitution fine" means a fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4.

(2) "Restitution order" means an order for restitution to the victim of a crime imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4.

~~**SEC. 2.**~~ **SEC. 3.** To the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment

Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.

Date of Hearing: April 4, 2017
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 702 (Lackey) – As Amended March 27, 2017

SUMMARY: Modifies California law as it relates to refusal to submit to a chemical test due to suspicion of driving under the influence (DUI) to comply with the Supreme Court's ruling in *Birchfield v. North Dakota, (2016) 136 S. Ct. 2160.* Specifically, **this bill**:

1) Repeals the implied consent to submit to chemical testing of his or her blood or breath and would instead require a driver who is lawfully arrested for a specified DUI offense to submit to chemical testing of his or her blood or breath for the purpose of determining the alcoholic or drug content of his or her blood:

   a) Requires a peace officer to advise the person, as specified, that he or she has the choice of taking a chemical test, but that failure to take a blood or urine test will result in suspension or revocation of his or her driving privilege, and refusal to take a breath test will result in the same penalty and a fine or mandatory imprisonment if the person is convicted of a specified DUI offense; and

   b) Requires a person exempted from the blood test requirement because of hemophilia or a heart condition, as specified, to submit to, and complete, a breath test or a urine test, as specified.

2) Clarifies that it is a crime for a person to willfully refuse to complete a breath test after being lawfully arrested for a violation of specified driving under the influence offenses.

3) Specifies that the crime for refusal to complete a breath test shall not apply to a person who has submitted to and completed a blood test.

4) Removes a provision of law that requires a court to consider a person's refusal to take a chemical test as a special factor in determining whether to enhance a sentence, grant probation, or set enhanced probation terms when a person's blood is 0.15% or higher.

EXISTING LAW:

1) States that if any person is convicted of a violation of driving under the influence (DUI), and at the time of the arrest leading to that conviction that person willfully refused a peace officer's request to submit to, or willfully failed to complete, the chemical test or tests, the court shall impose the following penalties: (Veh. Code, § 23577, subd. (a).)

   a) If the person is convicted of a first violation of a DUI as specified, the punishment proscribed for a first-offense DUI shall be imposed;

b) If the person is convicted of a second violation of a DUI, the punishment shall be enhanced by an imprisonment of 96 hours in the county jail, whether or not probation is granted and no part of which may be stayed, unless the person is sentenced to, and incarcerated in, the state prison and execution of that sentence is not stayed;

c) If the person is convicted of a third violation of a DUI, the punishment shall be enhanced by an imprisonment of 10 days in the county jail, whether or not probation is granted and no part of which may be stayed; and

d) If the person is convicted of a fourth or subsequent DUI violation, the punishment shall be enhanced by imprisonment of 18 days in the county jail, whether or not probation is granted and no part of which may be stayed.

2) Provides that person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of specified DUI offenses. If a blood or breath test, or both, are unavailable, then a urine test is required as specified. (Veh. Code, § 23612, subd. (a)(1)(A).)

3) States that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood for the purpose of determining the drug content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section specified DUI offenses. If a blood test is unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test. (Veh. Code, § 23612, subd. (a)(1)(B).)

4) Provides that the testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of specified DUI offenses. (Veh. Code, § 23612, subd. (a)(1)(C).)

5) Specifies that the person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a DUI, and: (Veh. Code, § 23612, subd. (a)(1)(D).)

a) The suspension of the person's privilege to operate a motor vehicle for a period of one year,

b) The revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within 10 years of a separate violation DUI offense; or

c) The revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within 10 years of two or more separate DUI violations, as specified.

6) Provides that if the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable,

the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test. (Veh. Code, § 23612, subd. (a)(2)(A).)

7) States that if the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood or breath, and the officer shall advise the person that he or she has that choice. (Veh. Code, § 23612, subd. (a)(2)(B).)

8) States that a person who chooses to submit to a breath test may also be requested to submit to a blood test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The officer shall advise the person that he or she is required to submit to an additional test. The person shall submit to and complete a blood test. If the person arrested is incapable of completing the blood test, the person shall submit to and complete a urine test. (Veh. Code, § 23612, subd. (a)(2)(C).)

9) Provides that if the person is lawfully arrested for an offense allegedly committed in violation of a specified DUI offense, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood or breath, the person has the choice of those tests, including a urine test, that are available at the facility to which that person has been transported. In that case, the officer shall advise the person of those tests that are available at the medical facility and that the person's choice is limited to those tests that are available. (Veh. Code, § 23612, subd. (a)(3).)

10) Provides that an officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law. (Veh. Code, § 23612, subd. (a)(4).)

11) States that a person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. A person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer. (Veh. Code, § 23612, subd. (a)(5).)

12) Specifies that a person who is afflicted with hemophilia is exempt from the blood test required by this section, but shall submit to, and complete, a urine test. (Veh. Code, § 23612, subd. (b).)

13) Provides that a person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test

required by this section, but shall submit to, and complete, a urine test. (Veh. Code, § 23612, subd. (c).)

14) States that a person lawfully arrested for an offense allegedly committed while the person was driving a motor vehicle in violation of specified DUI offenses may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed. (Veh. Code, § 23612, subd.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 702 will conform California's 'implied consent' DUI law to the due process requirements set forth by the SCOTUS by requiring peace officers to notify drivers lawfully arrested for a DUI of their choice to take a chemical test.

   "This bill will also bring this statutory scheme into compliance with Birchfield, supra., by removing the criminal sanctions on a suspected DUI driver for refusing a blood test. Peace officers will instead be authorized to impose administrative remedies, such as a license's suspension, when a lawfully arrested driver refuses to participate in a chemical test.

   "AB 702 is necessary to rectify current California DUI laws with recent SCOTUS rulings."

2) **Fourth Amendment as Applied to DUI Chemical Tests:** The Fourth Amendment protects people from unreasonable searches by the government. A search occurs when the police intrude into a place where a person has a reasonable expectation of privacy, such as a person's house or even a person's body. For a search to be reasonable, police are usually required to meet the standard of "probable cause" (having a good reason to search). In most cases, an officer will get a search warrant by providing some information to a judicial official that a crime was committed at the place to be searched or that particular evidence of a crime exists at the location to be searched. This process can go quickly, especially when done over the phone or electronically. If the judicial official agrees that probable cause exists, he or she will issue the warrant.

   However, the following examples are instances when police can search without a warrant:

   a) In a consent search. This is when the person gives permission for the search.

   b) In a search incident to lawful arrest. This is when a person is lawfully arrested and police can search the person and the area within that person's immediate control for the officers' safety.

   c) When evidence of a crime is in plain view because there is no expectation of privacy in this situation.

d) In an exigent circumstances search. This is when there is an emergency or pressing need and not enough time for a police officer to secure a search warrant.

Taking a blood or breath test is referred to as a BAC test (blood alcohol content). A BAC test is considered a search. Having a driver take a breath or blood test is one of the most common ways to gather evidence in a DUI case (driving under the influence). In a breath test, which may occur on the road or at the police station, the driver breathes into a breathalyzer. The purpose is to detect the amount of alcohol in the driver's body. A blood test that detects alcohol or drugs in the body is usually a more accurate method than the breath test. It is taken by a certified professional, usually at a hospital, who uses a syringe to take blood.

All 50 states have "implied consent laws." These laws say that drivers automatically give permission to police officers to test for BAC if an officer has reason to believe that a driver is under the influence. If drivers refuse, they can lose their license. However, 12 states, including North Dakota, go further and make it a separate crime (arrest and potential jail time), apart from how the DUI turns out, for drivers to refuse to let officers test their BAC.[1]

3) **Birchfield v. North Dakota**: The 2013 case of Danny Birchfield involved a driver in a DUI case who refused to consent to a blood test when requested by an officer. Mr. Birchfield had submitted to a breath test prior to the request, which showed that he was intoxicated. Mr. Birchfield was charged with breaking the implied consent law of North Dakota.

At trial, Mr. Birchfield argued that his Fourth Amendment rights were violated by criminalizing his refusal to be searched when he failed to consent to the blood test. The trial court, and subsequently the Supreme Court of North Dakota ruled that Mr. Birchfield's constitutional rights were not violated when the state of North Dakota criminalized the refusal to take a blood test. The basis of this determination was that the officers only administered the test when they established probable cause to believe that the driver was impaired. Thus, the state courts deemed the search reasonable.

The United States Supreme Court reviewed the decision of the South Dakota Supreme Court because it was based on an interpretation of federal constitutional law. The Supreme Court asked, whether a state can criminalize a refusal to take a blood test, absent a warrant, through an implied consent law. *Birchfield v. North Dakota, (2016) 136 S. Ct. 2160, at 2173.* The court ruled that the Fourth Amendment permits warrantless breath tests for drunk driving, but does not permit warrantless blood tests. The court determined that the breath tests is barely a physical intrusion, as opposed to the blood test which can even leave DNA samples with the government.

4) **Argument in Support**: According to the *California District Attorneys Association,* "This bill would conform California's 'implied consent' DUI law to the due process requirements set forth by the Supreme Court of the United States in *Birchfield v. North Dakota* (2016) 136 S.Ct. 2160 [195 L.Ed.2d 560].

"As you know, existing law provides for criminal sanctions for failure to comply with a lawful request to have a biological sample (breath or blood) tested for substances that could impair a

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[1] According to Street Law, Inc. 2016.

person's ability to safely operate a vehicle. In *Birchfield*, and the two companion cases, the SCOTUS ruled that breath testing was not a violation of the Fourth Amendment as it was incident to an arrest, but obtaining a blood sample would require a warrant. SCOTUS also held that the usual exceptions to the warrant requirement would also apply.

"The reason we need to change California law is that one of the holdings in *Birchfield, supra.*, was that a state could not burden the invocation of the Fourth Amendment protection by imposing criminal sanctions. Such sanctions made the consent or waiver of that protection coerced. However, the justices did approve the use of administrative remedies as a reasonable invocation of the State interest in regulating safety on the roads.

"California's statutory scheme for the so-called 'implied consent' law is contained in three sections – Vehicle Code sections 23612, 23577, and 23578. AB 702 will bring this statutory scheme into compliance with *Birchfield, supra.*, by removing the criminal sanctions on a suspected DUI driver for refusing a blood test."

5) **Argument in Opposition**: According to *California Attorneys for Criminal Justice*, "AB 702 also fails to take into consideration the totality of the issues addressed by the *Birchfield* decision.

"The *Birchfield* court accurately described blood draws as fundamentally distinct and more invasive than DUI breath tests:

> *"The impact on breath tests on privacy is slight, and the need for BAC testing is great. We reach a different conclusion with respect to blood tests. Blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Respondents have offered no satisfactory justification for demanding the more intrusive alternative without a warrant. 579 U.S.___(2016).*

"The *Birchfield* court recognized that a forced blood draw, attempted when someone is resisting, could lead to dangerous situations for both law enforcement and the suspect. North Dakota, whose implied consent law was at issue, places critical limits on law enforcement's authority to use force to draw blood.

> *"Thus, it is possible to extract a blood sample from a subject who forcibly resists, but many States reasonably prefer not to take this step. See, e.g., Neville, 459 U. S., at 559–560. North Dakota, for example, tells us that it generally opposes this practice because of the risk of dangerous altercations between police officers and arrestees in rural areas where the arresting officer may not have backup. (Brief for Respondent in No. 14–1468, p. 29.) Under current North Dakota law, only in cases involving an accident that results in death or serious injury may blood be taken from arrestees who resist. Compare N. D. Cent. Code Ann. §§39–20–04(1), 39–20–01, with §39–20–01.1.*

"The court in *Birchfield* arrived at its decision knowing that the South Dakota law, and many other states, have adopted limits on the use of force. Unfortunately, California is not one of those states. Consequently, AB 702 could inadvertently be interpreted to provide unfettered authority to law enforcement to use physical force to stick a needle into someone's vein. CACJ asks that this bill be amended to include some limitation on the use of force, to avoid

unnecessary confrontations with police officers. In Texas there was a highly publicized case and lawsuit where approximately 5 law enforcement officials teamed up to violently hold down a suspect who was afraid of needles. We do not want to see this type of dangerous situation repeated in California.

"AB 702 delineates advisements to be proffered upon the arrest of a California driver. However, the language is confusing, contradictory and will likely lead to inadvertent chemical test refusals, as well as, improper waiver of consent. At minimum, these advisements need to be reworked with input from stakeholders, and more appropriately designed for the situation covered by the bill, namely, a roadside interaction between police and a driver being placed under arrest. Duress, panic, and fear are common responses in this situation. As such the advisements must be clear, concise and in plain language consistent with current law. Below is one alternative:

> *" 'You are entitled to a number of constitutional protections. This includes the right to be free from a forced blood test without a warrant. However, since you are under arrest, you are required to take a breath test to determine your blood alcohol level. If you refuse to take this test, or intentionally fail to provide a proper breath sample, you can be taken against your will to a local hospital or clinic and we will draw blood from you. If you refuse to take either a breath or blood test, your driving privileges will be suspended.'*

"As we previously indicated, it is generally accepted that a blood draw is a more invasive tactic than a DUI breath test. In California, we have seen a dramatic advancement in the technology of breath test devises. Although they are not without error, the proper use of these devices lead to countless DUI convictions. California has approved mobile EPAS devices that can be used at the scene of an arrest, and whose results are admissible in court.

"In light of these developments, and the invasiveness of blood draws, is it time for California to reconsider the inclusion of blood draws in the implied consent law? What is the added value? CACJ is also concerned that local law enforcement could choose to decrease their reliance on breath tests making blood draws the only option. Nothing in AB 702 prevents this shift. CACJ believes it is time to review whether blood tests be reserved only for DUI cases involving death or injury."

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (sponsor)
California Police Chiefs Association
Property Casualty Insurers Association of America
San Diego County District Attorney's Office

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association

Analysis Prepared by: Gabriel Caswell / PUB. S. /

Date of Hearing: April 4, 2017
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 720 (Eggman) – As Amended March 27, 2017
As Proposed to be Amended in Committee

SUMMARY: Applies the existing framework for involuntary medication of a person in county jail after being sentenced on a criminal conviction, to all inmates in county jail. Specifically, **this bill**:

1) States that if a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication if the inmate is a danger to self or others, or is gravely disabled, and specified procedures involving a hearing and independent review are followed.

2) Defines "inmate" for purposes of this bill as a person confined in the county jail, including, but not limited to, a person sentenced to imprisonment in a county jail, a person housed in a county jail during or awaiting trial proceedings, a person who has been booked into a county jail and is awaiting arraignment, transfer, or release.

3) States that a court may review, modify, or terminate an involuntary medication order for a inmate awaiting trial, where there is a showing that the involuntary medication is interfering with the inmate's due process rights in the criminal proceeding.

4) Specifies that the hearing officer can consider whether involuntary medication would prejudice a pretrial detainees defense.

5) Provides that hearings and ex parte orders involving involuntary medication of pretrial detainees shall be before a judge in the superior court where the criminal case is pending.

EXISTING LAW:

1) Prohibits a person sentenced to imprisonment in a county jail from being administered any psychiatric medication without his or her prior informed consent, except under specified circumstances. (Pen. Code, § 2603, subd. (a).)

2) States that if a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication; or treatment may be given on either a nonemergency basis as specified, or on an emergency or interim basis as specified. (Pen. Code, § 2603, subd. (b).)

3) Provides a county department of mental health, or other designated county department, may seek to initiate involuntary medication on a nonemergency basis only if all of the following

conditions have been met: (Pen. Code, § 2603, subd. (c)(1)-(7).)

a) A psychiatrist or psychologist has determined that the inmate has a serious mental disorder;

b) A psychiatrist or psychologist has determined that, as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medications, or is a danger to self or others;

c) A psychiatrist has prescribed psychiatric medications for the treatment of the inmate's disorder, has considered the risks, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient;

d) The inmate has been advised of the risks and benefits of, and treatment alternatives to, the psychiatric medication and refuses, or is unable to consent to, the administration of the medication;

e) The inmate is provided a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer, as specified;

f) The inmate is provided counsel at least 21 days prior to the hearing, unless emergency medication is being administered, in which case the inmate would receive expedited access to counsel. The hearing shall be held not more than 30 days after the filing of the notice with the superior court, unless counsel for the inmate agrees to extend the date of the hearing; and

g) The inmate and counsel are provided with written notice of the hearing at least 21 days prior to the hearing, unless emergency or interim medication is being administered in which case the inmate would receive an expedited hearing. The written notice shall do all of the following:

   i) Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychiatric medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication; and

   ii) Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel for the inmate shall have access to all medical records and files of the inmate; and

   iii) Inform the inmate of his or her right to appeal the determination to the superior court or the court of appeal as specified, and his or her right to file a petition for writ of habeas corpus.

4) States that an order for involuntary medication from a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer must be supported by a determination based on clear and convincing evidence that the inmate has a mental illness or

disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychiatric medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest. (Pen. Code, § 2603, subd. (c)(8).)

5) Provides that an inmate is entitled to file one motion for reconsideration following a determination that he or she may receive involuntary medication, and may seek a hearing to present new evidence, upon good cause shown. (Pen. Code, § 2603, subd. (c)(10).)

6) Provides that a physician may take appropriate action in an emergency. (Pen. Code, § 2603, subd. (d).)

7) States that an emergency exists when there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impractical, due to the seriousness of the emergency, to first obtain informed consent. (Pen. Code, § 2603, subd. (d).)

8) Specifies that if psychiatric medication is administered during an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administered for only so long as the emergency continues to exist. (Pen. Code, § 2603, subd. (d).)

9) States that if the clinicians of the county department of mental health, or other designated county department, identify a situation that jeopardizes the inmate's health or well-being as the result of a serious mental illness, and necessitates the continuation of medication beyond the initial 72 hours pending the full mental health hearing, the county department may seek to continue the medication by giving notice to the inmate and his or her counsel of its intention to seek an ex parte order to allow the continuance of medication pending the full hearing. If an order is issued, the psychiatrist may continue the administration of the medication until the hearing is held. (Pen. Code, § 2603, subd. (d).)

10) States that the determination that an inmate may receive involuntary medication shall be valid for one year from the date of the determination, regardless of whether the inmate subsequently gives his or her informed consent. (Pen. Code, § 2603, subd. (e).)

11) States that if a determination has been made to involuntarily medicate a county jail inmate, the medication shall be discontinued one year after the date of that determination, unless the inmate gives his or her informed consent to the administration of the medication, or unless a new determination is made pursuant to the procedures set forth above. (Pen. Code, § 2603, subd. (f).)

12) Specifies that any case in which it appears to the person in charge of a jail, or juvenile detention facility, or to a judge, that a person in custody in that jail or juvenile detention facility may be mentally disordered, he or she may cause the prisoner to be taken to a facility for 72-hour treatment and evaluation and he or she shall inform the facility in writing, which shall be confidential, of the reasons that the person is being taken to the facility. (Pen. Code § 4011.6.)

13) States that a person cannot be tried or adjudged to punishment while he or she is mentally incompetent. (Pen. Code, § 1367, subd. (a).)

14) Provides that a defendant is incompetent to stand trial where he or she has a mental disorder or developmental disability that renders him or her unable to understand the nature of the criminal proceedings or assist counsel in his or her defense. (Pen. Code, § 1367, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "With limited availability of inpatient psychiatric care in the community, many people dealing with severe mental illness end up in county jails and those facilities must provide treatment. According to the National Association of Counties, 64 percent of the jail population nationwide has a mental illness. A 2009 study found that 15 percent of male inmates and 31 percent of female inmates are dealing with a severe mental illness. Part of the solution in recent years has been to clarify protections for inmates who may need to receive involuntary medication in jails and prisons, in the event they become a danger to themselves or others, or gravely disabled.

   "In California alone, over 100,000 people received mental health treatment in county jails in 2014-2015, according to the Department of Health Care Services. The department also acknowledges that this number is likely underreported because contractors providing mental health services in jails did not always report data to the state on services provided.

   "Despite the fact that we have improved access to diversion programs and community mental health treatment, many people dealing with mental illness still end up in our county jails, and we must continue to strive to provide them timely and effective treatment. Involuntary medication in jails can help reduce harm in extreme cases of danger to the inmate, other inmates or staff, as well as treat an inmate's grave disability."

2) **Existing Law Only Codifies Procedures for Involuntary Medication for People in County Jails that Have Been Already Been Sentenced:** County jails house inmates that have been through the criminal process and have been sentenced to county jails, but they also house individuals who are detained in jail while they face criminal charges. Existing law provides procedures for involuntary medication which specifically apply to the portion of the county jail population that has been sentenced.

   This bill brings county jail inmates, who are awaiting trial, into the existing procedural framework when evaluating involuntary medication. This bill would extend the involuntary medication procedure to inmates confined in the county jail, including, but not limited to, a person sentenced to imprisonment in a county jail, a person housed in a county jail during or awaiting trial proceedings, a person who has been booked into a county jail and is awaiting arraignment, transfer, or release.

   This bill specifies procedures for involuntary medication of pretrial detainees when they are gravely disabled, or when they present a danger to self or others. "Gravely disabled" means that a person is presently unable to provide for his or her basic needs for food, clothing, or shelter because of mental disorder. (California Civil Jury Instructions, 4002.) When a person

is in a custodial setting such a jail, the facility serves to provide for their basic needs of food, clothing, or shelter. Given that the jail ensures that such needs are met, whether a pretrial detainee is gravely disabled does not necessarily present the same concerns or urgency as a situation where a pretrial detainee is dangerous to themselves or others.

3) **Constitutional Considerations Regarding Involuntary Medication for In Custody Individuals**: In *Washington v. Harper*, (1990) 494 U.S. 210, the U.S. Supreme Court held that a mentally-ill prisoner who is a danger to himself or others can be involuntarily medicated. Furthermore, the Court held in *Riggins v. Nevada,* (1992) 504 U.S. 127, that forced medication in order to render a defendant competent to stand trial for murder was constitutionally permissible under certain circumstances. Read together, the Court has stated that these two cases "indicate that the Constitution permits the Government to involuntarily to administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial, but only if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, talking account of less intrusive alternatives, is necessary significantly to the further important governmental trial-related interests." *Sell v. United States* (2003) 539 U.S. 166, 179.

In *Sell*, the Court goes on to further specify the limited circumstances when the U.S. Constitution permits the government to administer drugs to a pretrial detainee against the mentally ill criminal detainee's will when seeking to render him competent for trial. Under those circumstances, all of the following conditions must apply:

a) A court must find that important governmental interests are at stake. While bringing to trial a person accused of a serious crime is an important government interest, and timely prosecution satisfies the literal aspect of this element, that alone does not satisfy the purpose as there may be special circumstances that lessen its importance in a particular case. Consequently, this analysis must be done on a case-by-case basis. *Id.* at 180; *Carter v. Superior Court* (2006) 141 Cal.App.4th 992, 1002.

b) A "court must conclude that involuntary medication will *significantly further* those concomitant state interests. It must find that administration of the drugs is substantially likely to render the defendant competent to stand trial." *Sell, supra,* 539 U.S. at 181.

c) A court must find that the administration of the drugs is "substantially unlikely" to have side effects that interfere significantly with the person's ability to assist his or her counsel in conducting a defense. *Ibid (citing Riggins v. Nevada* (1992) 504 U.S. 127, 142-145.)

d) A court must find that involuntary medication is necessary to further those interests and that alternative, less intrusive treatments are unlikely to achieve substantially the same results. *Ibid.*

e) A court must find that administering the medication is medically appropriate, that is to say, in the inmate's best medical interest in light of his or her condition. *Ibid.*

The 9th Circuit Court of Appeal held that the U.S. Supreme Court standard articulated in *Harper, supra*, also applies to pre trial detainees who are a danger to self or others. (*United States v. Loughner*, (2012) (9th Cir.) 672 F.3d 731, 750.) The court in *Loughner* stated, ". . . ,

we now hold that when the government seeks to medicate a detainee—whether pretrial or post-conviction—on the grounds that he is a danger to himself or others, the government must satisfy the standard set forth in *Harper*. '[T]he Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will, if the inmate is dangerous to himself or others and the treatment is in the inmate' s medical interest." (*Loughner* at 752 (citing *Harper, supra* at 227.)

4) **Involuntary Medication May Interfere with a Pretrial Detainee's Due Process Rights to a Fair Trial and to Ability to Present a Defense:** Existing law only provides a procedure for the involuntary medication of individuals in county jail serving sentences where their criminal case has already been adjudicated. A person in county jail awaiting trial faces some additional considerations concerning the involuntary administration of medication compared to an individual whose case has already been adjudicated and is serving a sentence in county jail. An individual in custody on a pretrial basis has constitutional due process rights to a fair trial. Those rights can be negatively affected by the imposition of involuntary medication.

   The U.S. Supreme Court in *Riggins v. Nevada* (1992) 504 U.S. 127, 142-43 (Justice Kennedy Concurring), noted the involuntary medication can prejudice a defendant's trial rights in two principal ways: (1) by altering his demeanor in a manner that will prejudice his reactions and presentation in the courtroom, and (2) by rendering him unable or unwilling to assist counsel.

   In discussing the potential prejudice Justice Kennedy said "At all stages of the proceedings, the defendant's behavior, manner, facial expressions, and emotional responses, or their absence, combine to make an overall impression on the trier of fact, an impression that can have a powerful influence on the outcome of the trial. If the defendant takes the stand, as Riggins did, his demeanor can have a great bearing on his credibility and persuasiveness, and on the degree to which he evokes sympathy." (*Id.* at 142.)

   Justice Kennedy went on to say, "The defendant must be able to provide needed information to his lawyer and to participate in the making of decisions on his own behalf. The side effects of antipsychotic drugs can hamper the attorney-client relation, preventing effective communication and rendering the defendant less able or willing to take part in his defense." (*Id.* at 144.)

   In an effort to balance the necessity of involuntary medication with the individual's trial rights, this bill contains language allowing consideration of the potential prejudice to a pretrial inmate subject to involuntary. This bill specifies that when a pretrial inmate is the subject of involuntary medication, the superior court evaluating the appropriateness of the involuntary medication can evaluate whether such medication would prejudice the inmates defense.

5) **Existing Law Provides Treatment Alternatives to County Jail for Individuals Experiencing Severe Mental Health Issues:** Existing law, under the Lanterman-Petris-Short Act, authorizes peace officers, members of the attending staff of an evaluation facility designated by the county, or other professional persons designated by the county to take an individual into custody if they believe that, due to a mental disorder, a person is: (1) a danger to himself or herself; (2) a danger to others; or (3) gravely disabled, meaning unable to

provide for his or her basic needs for food, clothing, and shelter.

Existing law provides that individuals in custody in county jails can be transferred to a county facility when because of a mental disorder the person is a danger to himself/herself or others, or is gravely disabled. (Pen. Code, § 4011.6.) Such facilities are locked and are staffed by medical personnel specifically trained to treat the individuals described above. Given that existing law provides options for pretrial individuals to be transported to secure mental health facilities, it raises the question as to whether it would be preferable to have them treated in such a facility as opposed to a county jail. If such an approach is preferable, it might not be practical due to lack of available space in county facilities. The sponsors of this bill indicate that there is not sufficient bed space in the existing locked mental health facilities to accommodate the needs of individuals currently in the jail setting.

6) **Proposed Amendments to be Adopted in Committee:** The proposed amendments:

   a) State that a court may review, modify, or terminate an involuntary medication order for a inmate awaiting trial, where there is a showing that the involuntary medication is interfering with the inmate's due process rights in the criminal proceeding.

   b) Specify that the hearing officer can consider whether involuntary medication would prejudice a pretrial detainees defense.

   c) Provide that hearings and ex parte orders involving involuntary medication of pretrial detainees shall be before a judge in the superior court where the criminal case is pending.

6) **Argument in Support**: According to the *California Psychiatric Association*, "With the marked reduction in psychiatric hospital beds in California communities in the last 5 decades, county jails have become the de facto default destination to house untreated, often homeless, mentally ill persons. In a jail setting, many of these inmates or detainees who are admitted - often very sick with a mental disorder - become even more delusional, disorganized and disruptive in confinement.

"Mentally ill individuals tend to spend much longer in the pretrial process than their peers without mental illness when charged with the same crimes. Many weeks, and more likely months, may pass before adjudication. Many of these inmates refuse to accept medication, in fact are so sick they are not able to recognize they are ill and need help. Under these circumstances psychotic individuals, for instance, who are delusional and experiencing hallucinations cannot follow correction officer orders, may bang their heads against cell walls, scream at all hours, or smear feces around their cells. They suffer mightily from their illness.

"Case law, most recently *United States v Loughner*, in the 9th Circuit Court of Appeal (2012), has determined that the same standards for the involuntary medication of convicted inmates who are dangerous or gravely disabled because of a mental disorder apply to pretrial detainees who are dangerous or gravely disabled because of a mental disorder. The proposal in AB 720 lies squarely within these clearly defined legal parameters.

AB 720 will facilitate the earliest possible treatment in jail consistent with detainee due process rights, which can have many beneficial effects including reducing the demand for

community inpatient hospitalization or state hospital admission for many of the prisoners who may deteriorate to 'incompetent to stand trial' status if their urgent mental health care needs are not addressed promptly."

7) **Argument in Opposition**: According to *Disability Rights California (DRC)*, "DRC opposes this bill for several reasons. First, because of the undetermined, and often short, time periods that this newly affected group is in custody. This expansion of a county jail's authority may mean the person will not be afforded due process. Second, the uncertainty of continued access to medication raises continuity of care concerns. Third, it may impact a person's ability to participate in the defense of their active criminal case. Fourth, the bill impacts poor people disproportionality. And fifth, this bill would treat differently situated individuals in very dissimilar positions the same, when different procedures are appropriate.

"Unlike the individuals currently covered by Penal Code section 2603, individuals in this new group are not incarcerated for a set period of time. The proposed bill would take away this group's right to a timely hearing to determine if involuntary medication is in fact warranted. It compromises their due process and other rights, and suggests that the administrative convenience of a county trumps the rights of these individuals who have not been convicted of a crime.

"Further, if pretrial defendants are released quickly, as many are, they may have continuity of care issues that may lead to life threatening medical situations. Insufficient monitoring of side effects and other dangers is inherent in unmonitored and involuntarily imposed medication. Given the difficulty in providing continuing services to this population after release, it is impossible to ensure the continuity of medication needed, a problem that does not occur under current law.

Additionally, medicating people in the midst of their trial may negatively impact their ability to participate in their case. It can take a while to identify the proper medication and become stabilized on it. Forcing an individual to go through this process pretrial threatens the person's constitutional right to participate in their case. A person may be drowsy, have side effects or even be aggressive because of the type of medication given resulting in challenges when working with their attorney or participating in court proceedings, at a time when their involvement is crucial.

"The change would also disproportionately affect low-income defendants. Criminal defendants who are poor and unable to afford or secure bail are more likely to be detained in a county jail while awaiting trial and resolution of criminal charges. There would be a deep and fundamental unfairness if this bill passes: allowing a criminal defendant with the financial ability to secure release while awaiting trial to maintain the customary statutory protections against involuntary medication enshrined in state law, while criminal defendants too poor to afford bail face the watered down legal protections currently reserved only for individuals who have been convicted of a crime and sentenced.

"Lastly, under this bill, the same involuntary medication procedures would be given to people in very different situations. For example, many Immigration and Customs Enforcement (ICE) detainees are currently housed in county jails. Their ability to participate in pending deportation proceedings, where the stakes are often extraordinarily high, may be compromised by the imposition of involuntary medication without adequate due process

protections. Further, they may be deported while on medication, which would likely be abruptly stopped, causing continuity of care concerns raised above. This bill also applies to intoxicated people – involuntarily medicating such individuals could be dangerous and life threatening. In addition, they will most likely be released before a hearing to determine if medication is appropriate."

8) **Related Legislation**:

a) SB 684 (Bates), would make changes to existing procedures regarding a defendant who is incompetent to stand trial. SB 684 is set for hearing on April 18th, in the Senate Public Safety Committee.

b) SB 565 (Portantino), would require the mental health facility to make reasonable attempts to notify family members or any other person designated by the patient during specified proceedings involving a person that has been involuntarily committed for a mental disorder. SB 565 is awaiting a hearing in the Senate Appropriations Committee.

9) **Prior Legislation**:

a) AB 1907 (Lowenthal), Chapter 814, Statutes of 2012, created the statute that is the subject of this bill.

b) AB 1114 (Lowenthal), Chapter 665, Statutes of 2011, changed the procedures for involuntary medication of inmates in the California Department of Corrections.

c) AB 2380 (Dymally), of the 2005-06 Legislative Session, would have clarified that "treatment" for medically disordered offenders paroled to other facilities for treatment includes involuntary medication. AB 2380 failed passage in Public Safety Committee.

d) AB 1424 (Thompson), Chapter 506, Statutes of 2001, related to the involuntary medication for individuals under the Lanterman-Petris-Short Act.

e) AB 2798 (Thompson), of the 1999-2000 Legislative Session, would have authorized a judicially committed forensic patient in a state hospital to be medicated involuntarily with antipsychotic mediation in accordance with specified procedures. AB 2798 was never heard by Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Psychiatric Association (Sponsor)
California Attorneys for Criminal Justice
California State Sheriff's Association
California Treatment Advocacy Coalition
Treatment Advocacy Center

Opposition

Disability Rights California
Analysis Prepared by: David Billingsley / PUB. S. /

Amended Mock-up for 2017-2018 AB-720 (Eggman (A))

Mock-up based on Version Number 98 - Amended Assembly 3/27/17
Submitted by: David Billingsley, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2603 of the Penal Code is amended to read:

2603. (a) Except as provided in subdivision (b), an inmate confined in a county jail shall not be administered any psychiatric medication without his or her prior informed consent.

(b) If a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication. Treatment may be given on either a nonemergency basis as provided in subdivision (c), or on an emergency or interim basis as provided in subdivision (d).

(c) A county department of mental health, or other designated county department, may seek to initiate involuntary medication on a nonemergency basis only if all of the following conditions have been met:

(1) A psychiatrist or psychologist has determined that the inmate has a serious mental disorder.

(2) A psychiatrist or psychologist has determined that, as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medications, or is a danger to self or others.

(3) A psychiatrist has prescribed one or more psychiatric medications for the treatment of the inmate's disorder, has considered the risks, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient.

(4) The inmate has been advised of the risks and benefits of, and treatment alternatives to, the psychiatric medication and refuses, or is unable to consent to, the administration of the medication.

(5) The inmate is provided a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer, as specified in subdivision (c) of Section 5334 of the Welfare and Institutions Code.

(6) The inmate is provided counsel at least 21 days prior to the hearing, unless emergency or interim medication is being administered pursuant to subdivision (d), in which case the inmate would receive expedited access to counsel. The hearing shall be held not more than 30 days after the filing of the notice with the superior court, unless counsel for the inmate agrees to extend the date of the hearing.

(7) The inmate and counsel are provided with written notice of the hearing at least 21 days prior to the hearing, unless emergency or interim medication is being administered pursuant to subdivision (d), in which case the inmate would receive an expedited hearing. The written notice shall do all of the following:

(A) Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychiatric medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication.

(B) Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel for the inmate shall have access to all medical records and files of the inmate, but shall not have access to the confidential section of the inmate's central file which contains materials unrelated to medical treatment.

(C) Inform the inmate of his or her right to appeal the determination to the superior court or the court of appeal as specified in subdivisions (e) and (f) of Section 5334 of the Welfare and Institutions Code, and his or her right to file a petition for writ of habeas corpus with respect to any decision of the county department of mental health, or other designated county department, to continue treatment with involuntary medication after the superior court judge, court-appointed commissioner or referee, or court-appointed hearing officer has authorized treatment with involuntary medication.

(8) A superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychiatric medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest. In the event of any statutory notice issues with either initial or renewal filings by the county department of mental health, or other designated county department, the superior court judge, court-appointed commissioner or referee, or court-appointed hearing officer shall hear arguments as to why the case should be heard, and shall consider factors such as the ability of the inmate's counsel to adequately prepare the case and to confer with the inmate, the continuity of care, and, if applicable, the need for protection of the inmate or institutional staff that would be compromised by a procedural default.

(9) The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmate's mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as the result of a mental disorder.

(10) An inmate is entitled to file one motion for reconsideration following a determination that he or she may receive involuntary medication, and may seek a hearing to present new evidence, upon good cause shown. ***This provision shall not prevent a court from reviewing, modifying, or terminating an involuntary medication order for a inmate awaiting trial, where there is a showing that the involuntary medication is interfering with the inmate's due process rights in the criminal proceeding.***

(d) Nothing in this section is intended to prohibit a physician from taking appropriate action in an emergency. An emergency exists when there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impractical, due to the seriousness of the emergency, to first obtain informed consent. If psychiatric medication is administered during an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administered for only so long as the emergency continues to exist. If the clinicians of the county department of mental health, or other designated county department, identify a situation that jeopardizes the inmate's health or well-being as the result of a serious mental illness, and necessitates the continuation of medication beyond the initial 72 hours pending the full mental health hearing, the county department may seek to continue the medication by giving notice to the inmate and his or her counsel of its intention to seek an ex parte order to allow the continuance of medication pending the full hearing. Treatment of the inmate in a facility pursuant to Section 4011.6 shall not be required in order to continue medication under this subdivision unless the treatment is otherwise medically necessary. The notice shall be served upon the inmate and counsel at the same time the inmate is given the written notice that the involuntary medication proceedings are being initiated and is appointed counsel as provided in subdivision (c). The order may be issued ex parte upon a showing that, in the absence of the medication, the emergency conditions are likely to recur. The request for an ex parte order shall be supported by an affidavit from the psychiatrist or psychologist showing specific facts. The inmate and the inmate's appointed counsel shall have two business days to respond to the county department's ex parte request to continue interim medication, and may present facts supported by an affidavit in opposition to the department's request. A superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer shall review the ex parte request and shall have three business days to determine the merits of the department's request for an ex parte order. If an order is issued, the psychiatrist may continue the administration of the medication until the hearing described in paragraph (5) of subdivision (c) is held.

(1) If the county elects to seek an ex parte order pursuant to this subdivision, the county department of mental health, or other designated county department, shall file with the superior court, and serve on the inmate and his or her counsel, the written notice described in paragraph

(7) of subdivision (c) within 72 hours of commencing medication pursuant to this subdivision, unless either of the following occurs:

(A) The inmate gives informed consent to continue the medication.

(B) A psychiatrist determines that the psychiatric medication is not necessary and administration of the medication is discontinued.

(2) If medication is being administered pursuant to this subdivision, the hearing described in paragraph (5) of subdivision (c) shall commence within 21 days of the filing and service of the notice, unless counsel for the inmate agrees to a different period of time.

(3) With the exception of the timeline provisions specified in paragraphs (1) and (2) for providing notice and commencement of the hearing in emergency or interim situations, the inmate shall be entitled to and be given the same due process protections as specified in subdivision (c). The county department of mental health, or other designated county department, shall prove the same elements supporting the involuntary administration of psychiatric medication and the superior court judge, court-appointed commissioner or referee, or court-appointed hearing officer shall be required to make the same findings described in subdivision (c).

(e) The determination that an inmate may receive involuntary medication shall be valid for one year from the date of the determination, regardless of whether the inmate subsequently gives his or her informed consent.

(f) If a determination has been made to involuntarily medicate an inmate pursuant to subdivision (c) or (d), the medication shall be discontinued one year after the date of that determination, unless the inmate gives his or her informed consent to the administration of the medication, or unless a new determination is made pursuant to the procedures set forth in subdivision (g).

(g) To renew an existing order allowing involuntary medication, the county department of mental health, or other designated county department, shall file with the superior court, and shall serve on the inmate and his or her counsel, a written notice indicating the department's intent to renew the existing involuntary medication order.

(1) The request to renew the order shall be filed and served no later than 21 days prior to the expiration of the current order authorizing involuntary medication.

(2) The inmate shall be entitled to, and shall be given, the same due process protections as specified in subdivision (c).

(3) Renewal orders shall be valid for one year from the date of the hearing.

(4) An order renewing an existing order shall be granted based on clear and convincing evidence that the inmate has a serious mental disorder that requires treatment with psychiatric medication,

and that, but for the medication, the inmate would revert to the behavior that was the basis for the prior order authorizing involuntary medication, coupled with evidence that the inmate lacks insight regarding his or her need for the medication, such that it is unlikely that the inmate would be able to manage his or her own medication and treatment regimen. No new acts need be alleged or proven.

(5) If the county department of mental health, or other designated county department, wishes to add a basis to an existing order, it shall give the inmate and the inmate's counsel notice in advance of the hearing via a renewal notice or supplemental petition. Within the renewal notice or supplemental petition, as described in subdivision (g), the county department of mental health, or other designated county department, shall specify what additional basis is being alleged and what qualifying conduct within the past year supports that additional basis. The county department of mental health, or other designated county department, shall prove the additional basis and conduct by clear and convincing evidence at a hearing as specified in subdivision (c).

(6) The hearing on any petition to renew an order for involuntary medication shall be conducted prior to the expiration of the current order.

(h) In the event of a conflict between the provisions of this section and the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of the Government Code), this section shall control.

(i) As used in this section, "inmate" means a person confined in the county jail, including, but not limited to, a person sentenced to imprisonment in a county jail, a person housed in a county jail during or awaiting trial proceedings, and a person who has been booked into a county jail and is awaiting arraignment, transfer, or release.

(j) If the inmate is in custody awaiting trial, the hearing described in paragraph (5) of subdivision (c) and any requests for ex parte orders shall be before a judge in the superior court where the criminal case is pending. Nothing in this section is intended to prevent a superior court judge from considering whether involuntary medication prejudices a pretrial detainee's defense in the hearing described in paragraph (5) of subdivision (c).

Date of Hearing: April 4, 2017
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 728 (Waldron) – As Amended March 27, 2017

SUMMARY: Expands the list of offenses that make a defendant ineligible for expungement relief (dismissal of the conviction and underlying charge), following successful completion of probation or in the interests of justice, to include elder and dependent adult abuse, as specified. **Specifically**, this bill:

1) Includes any caretaker of an elder or dependent adult who violates any provision of law prescribing theft, embezzlement, forgery, or fraud, or a violation of identity theft, with respect to the property or personal identifying information of an elder or dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult; or,

2) Includes other conviction for elder or dependent adult abuse, as specified in statute, where the defendant was employed as a professional caretaker for the victim.

EXISTING LAW:

1) Defines probation as the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. (Pen. Code § 1203.)

2) Declares that probation is an essential element in the administration of criminal justice. The safety of the public, the nature of the offense, the interests of justice, including punishment, reintegration of the offender into the community, the loss to the victim and the needs of the defendant shall be the primary considerations in the granting of probation. The safety of the public is the most important consideration among these. (Pen. Code § 1202.7.)

3) Provides that in any case where the defendant has fulfilled the conditions of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the prescribed relief, and where the defendant is not serving a sentence on probation or charged with any offense, the court shall set aside the verdict or permit withdrawal of a guilty plea. The court shall then dismiss the accusation against the defendant, and, except as noted, the defendant shall be released from all penalties and disabilities. (Pen. Code § 1203.4, subd. (a).)

4) Prohibits the dismissal of the conviction and underlying charges for persons convicted of specified sex offenses involving minors, certain other sex offenses, a few traffic offenses, and infractions. (Pen. Code, § 1203.4, subd. (b).)

5) States that dismissal of an accusation or information under this provision does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent him or

her from being convicted of the offense of being an ex-felon in possession of a firearm. (Pen. Code § 1203.4, subd. (a).)

6) States that an order of dismissal does not relieve a person of the obligation to disclose the conviction in response to any questions contained in any application for public office, or for licensure for any state or local agency. (Pen. Code § 1203.4, subd. (a).)

7) Provides that in any other subsequent prosecution of the defendant, the dismissed prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted, or the accusation or information not dismissed. (Pen. Code § 1203.4, subd. (a).)

8) Provides that notwithstanding these provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of specified sex offenses, if there are extraordinary circumstances. (Pen. Code, § 1203.4, subd. (g).)

9) Declares that crimes against elders and dependent adults deserve special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf. (Pen. Code, § 368, subd. (a).)

10) Makes it a crime for a person who knows, or should have known, that another person is an elder or dependent adult to inflict unjustifiable physical pain or mental suffering, or willfully cause or permit that person to suffer, or to steal (including identity theft) or embezzle from that person, or to falsely imprison such a person by the use of violence, menace, fraud or deceit. (Pen. Code, § 368, subds. (b)-(d) & (f).)

11) Makes it a crime for any caretaker of an elder or dependent adult to steal (including identity theft) or embezzle from that person. (Pen. Code, § 368, subd. (e).)

12) Defines "elder" as any person who is 65 years of age or older. (Pen. Code, § 368, subd. (g).)

13) Defines "dependent adult" as any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental disabilities have been diminished because of age," or "any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility." (Pen. Code, § 368, subd. (h).)

14) Defines "caretaker" as any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult. (Pen. Code, § 368, subd. (i).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "San Diego County alone handles approximately 9,000 cases of elder, dependent adult and developmentally disabled abuse

each year. Current law permits defendants convicted of this abuse to have their crimes expunged from their record. AB 728 will amend California code by adding convictions of elder and dependent adult abuse to the list of crimes that are ineligible for dismissal, thereby protecting a defenseless population from suffering further abuse by those hired to care for them."

2) **Dismissal of a Conviction Pursuant to Penal Code Section 1203.4**: Probation is a grant of leniency for a convicted defendant who has shown amenability to rehabilitation. The conditions of probation should promote rehabilitation, protect the public and the victim and ensure that justice is done. (*People v. Fritchey* (1992) 2 Cal.App.4th 829, 835; *Brown v. Superior Court* (2002) 101 Cal.App.4th 313, 319.)

   Penal Code Section 1203.4 provides that a defendant who successfully completes probation is entitled to relief from specified penalties and disabilities attendant to the conviction if he or she has fully complied with the terms of probation. A court also has discretion to grant this relief, in the interests of justice, in other probation cases. "A grant of relief under section 1203.4 is intended to reward an individual who successfully completes probation by mitigating some of the consequences of his conviction and, with a few exceptions, to restore him to his former status in society to the extent the Legislature has power to do so." (*People v. Field* (1995) 31 Cal.App.4th 1778, 1786-1787; citations omitted.)

   When relief is granted under Penal Code section 1203.4, the conviction is set aside and the charging document is dismissed. However, this neither erases nor seals the record of conviction. Despite the dismissal order, the conviction record remains a public document. (*People v. Field, supra*, 31 Cal.App.4th at p. 1787.)

   A conviction dismissed pursuant to Penal Code section 1203.4 must be disclosed in an application for public office, or for licensure by any state or local agency. Relief under Penal Code section 1203.4 also does not prevent state licensing agencies from using the conviction in licensing decisions. (See e.g., Bus. & Prof. Code, §§ 475, 480, 490; Ed. Code, § 44009; *People v. Vasquez* (2001) 25 Cal.4th 1225, 1230.) On the other hand, except as specified, employers cannot consider a conviction dismissed under Penal Code section 1203.4 in hiring decisions. (Lab. Code, § 432.7.)

   Under current law, the prohibition to relief is directed mainly at sex offenses against children and certain other sex offenses, along with a few traffic offenses and infractions. SB 20 (Waldron), Chapter 143, Statutes of 2013, expanded the prohibition on relief to include specified pornography or obscenity offenses.

   This bill seeks to further expand the prohibition to include persons convicted of offenses against an elder or dependent adult while acting as a caretaker. In large part, the bill applies only to a person employed as a professional caretaker. However, the theft-related provisions apply broadly to any caretaker. (Pen. Code, § 368, subd. (e).)

   Argument in Support: According to the *San Diego County District Attorney*, "Evidence shows that it is common practice for some unscrupulous caretakers to move from victim to victim. Those who abuse this elderly population are predatory criminals. Unfortunately, current law allows these defendants, convicted of elder and dependent adult abuse, to have their crimes expunged from their criminal record thus providing them continued access to

new victims. Assembly Bill 728 will amend California code and close the loophole by adding convictions of elder and dependent adult abuse to the list of crimes that are ineligible for expungement dismissal.

"Prospective employers are barred from using a past conviction against the defendant in hiring decisions if the criminal record has been expunged. Caring for the elderly and dependent adults is a special field and it involves spending intimate time with these individuals. If a caretaker abuses their patient/client and is convicted they should not be allowed to go right back out and do it again."

3) **Argument in Opposition**: According to the *American Civil Liberties Union of California*, "The stigma of a criminal conviction severely interferes with people's ability to find employment.[] California's expungement process can lower this barrier for people who have successfully completed all the terms of probation – including paying fines and restitution, completing counseling programs and community service, and not committing any new crimes. Once a conviction is expunged, employers cannot consider the conviction in hiring decisions under most circumstances.[] However, the conviction remains on all government records and must be disclosed for all professional licenses, government jobs, and paid and unpaid work with sensitive populations – including the elderly.

"Expungements are critical for ameliorating the detrimental employment consequences of a conviction. They are available only to those who have been held accountable, taken responsibility for their actions, and successfully exited the criminal justice system. There is no public safety rationale for removing this important relief for people with a past conviction for elder abuse, as is proposed by AB 728. Further, because employers of elder caregivers already have access to applicants' expunged convictions,[] this bill would have no impact on a person with a prior conviction of elder abuse being hired as an elder caretaker. However, it would hinder their efforts to find any other form of employment.

"The benefits of record expungement extend beyond the individual whose record is expunged. A recent study found significant societal benefits of record expungement, including increased income, increased GDP, increased tax revenues, a reduction in government assistance, a reduction in recidivism, and an increase in additional societal benefits, such as access to housing.[]

"AB 728 will prevent people who have demonstrated their commitment to successful reentry from having a meaningful second chance."

4) **Related Legislation**:

a) AB 502, (Waldron), would create the Victim Compensation Pilot Program for victims of financial elder abuse in San Diego County. AB 502 passed in the Assembly Committee on Public Safety, was re-referred to the Assembly Committee on Aging and Long-Term Care.

b) AB 575 (Jones-Sawyer) would make substance abuse disorder counselors mandated reporters of elder and dependent adult abuse. AB 575 was referred to the Assembly Committees on Health and Judiciary.

c) AB 611 (Dababneh), would authorize a mandated reporter of suspected financial elder abuse to not honor a power of attorney, as specified. AB 611 was referred to Assembly Committees on Aging and Long-Term Care and Judiciary

d) AB 1115 (Jones-Sawyer) would allow defendants sentenced to prison for a felony that, if committed after enactment of Criminal Justice Realignment legislation in 2011, would have been eligible for county-jail sentencing to obtain an expungement. AB 1115 is pending hearing in this Committee today.

5) **Prior Legislation**:

a) AB 20 (Waldron), Chapter 143, Statutes of 2013, excluded specified offenses relating to obscene matter involving minors from the provisions allowing relief from all penalties and disabilities resulting from an offense for which the person was convicted, where specified criteria are met.

b) AB 1585 (Alejo), Chapter 708, Statutes of 2014, allows a court to set aside the conviction and dismiss the accusation where a person who has been convicted of solicitation or prostitution has completed a term of probation, and he or she can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.

c) AB 651 (Bradford), Chapter 787, Statutes of 2013, allows a court to set aside the conviction and dismiss the accusation against a defendant sentenced to county jail pursuant to realignment provisions, if specified conditions are satisfied.

d) AB 1384 (Bradford), Chapter 284, Statutes of 2011, allows a court to set aside the conviction and dismiss the accusation against a defendant who has been convicted of an infraction or misdemeanor but not granted probation, if specified conditions are satisfied.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Health Services at Home
Crime Victims United
San Diego County District Attorney

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
California Public Defenders Association
Courage Campaign
Root and Rebound

Analysis Prepared by: Cheryl Anderson / PUB. S. /

Date of Hearing: April 4, 2017
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 730 (Quirk) – As Introduced February 15, 2017

SUMMARY: Repeals the sunset on the law that allows San Francisco Bay Area Rapid Transit District (BART) to issue prohibition orders to passengers committing certain illegal behaviors, making BART's authority to do so permanent.

EXISTING LAW:

1) Authorizes BART to issue a prohibition order to any person who, on at least three separate occasions within a period of 90 consecutive days, is cited for an infraction committed in or on a vehicle, bus stop, or light rail station of the transit district for any of the following acts:

   a) Interfering with the operator or operation of a transit vehicle, or impeding the safe boarding or alighting of passengers;

   b) Committing any act or engaging in any behavior that may, with reasonable foreseeability, cause harm or injury to any person or property;

   c) Willfully disturbing others on or in a transit facility or vehicle by engaging in boisterous or unruly behavior;

   d) Carrying an explosive, acid, or flammable liquid in a public transit facility or vehicle;

   e) Urinating or defecating in a transit facility or vehicle, except in a lavatory;

   f) Willfully blocking the free movement of another person in a transit facility or vehicle; or,

   g) Defacing with graffiti the interior or exterior of the facilities or vehicles of a public transportation system. (Pub. Util. Code, § 99171, subd. (a)(1)(A).)

2) Authorizes a prohibition order to be issued to a person arrested or convicted for any misdemeanor or felony committed in or on a vehicle, bus stop, or light rail station of the transit district, for acts involving violence, threats of violence, lewd or lascivious behavior, or possession for sale or sale of a controlled substance. (Pub. Util. Code § 99171, subd. (a)(1)(B).)

3) Authorizes a prohibition order to be issued to a person convicted of loitering with the intent to commit specified drug offenses or loitering with intent to commit prostitution. (Pub. Util. Code § 99171, subd. (a)(1)(C).)

4) Prohibits a person subject to a prohibition order from entering the property, facilities, or vehicles of the transit district for a period of time deemed appropriate by the transit district, provided that the duration of the prohibition order does not exceed the following specified time limits:

   a) 30 days for a first order, 90 days for a second order within one year, and 180 days for a third order within one year related to infractions; or,

   b) 30 days if issued pursuant to an arrest for a misdemeanor or felony offense. Upon conviction for the offense, the order may be extended to a total of 180 days for a misdemeanor and one year for a felony. (Pub. Util. Code § 99171, subd. (a)(2)).

5) Specifies prohibition processes, notification procedures, and hearing and appeal procedures. (Pub. Util. Code § 99171, subds. (a)(3), (b) & (c).)

6) Requires the transit district to establish an advisory committee and to ensure that personnel charged with issuance and enforcement of prohibition orders receive training as emphasized and as recommended by the advisory committee. Tasks the advisory committee with responsibilities, as specified. Authorizes existing advisory committees to be used if appropriate. (Pub. Util. Code, § 99172.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Rider comfort and safety is a priority for BART personnel. In an effort to respond to growing public safety concerns, BART was allowed to enter into a pilot program to issue prohibition orders. These were to be issued as a last result when other efforts to protect the public failed. Safeguards were added to protect against abuse. Over the last three years, data tells us that although the number of prohibitions orders issued fluctuated from year to year, overall reports of violent crime dropped between 2013 and 2016. This reduction in violent crime occurred during a period of steady BART ridership growth. Safety should not be an issue when it comes to public transportation. By permanently granting BART the authority to issue prohibition orders, will continue to provide BART with the tools it needs to make sure all Californians are provided with a safe and comfortable environment when traveling."

2) **BART and Prohibition Orders**: AB 716 (Dickinson) Chapter 534, Statutes of 2011 authorized the creation of a three-year pilot program under which BART could issue prohibition orders denying passengers committing certain illegal behaviors entry onto transit vehicles and facilities. In 2013, BART initiated its AB 716 program, which also required BART to provide the Legislature with annual reports on the program. (Public Utilities Code § 99172.)

   The annual report for 2013 indicates that BART issued 146 prohibition orders between May 6, 2013, and December 31, 2013. None of the alleged violators contested the order. Twenty-five percent of those orders were related to domestic violence.

   The annual report for 2014 indicates that BART issued 281 prohibition orders that year. Six

of the alleged violators contested the order. Twenty percent of the prohibition orders issued involved domestic violence cases, a decrease from 2013.

SB1154 (Hancock) Chapter 559, Statutes of 2014, permitted BART to continue issuing these prohibition orders until January 1, 2018. The bill also clarified that BART Police Officers have the authority to issue emergency protective orders for individuals in a stalking situation within the transit system, and that they have the authority to take custody of weapons while investigating domestic violence situations.

The annual report for 2015 indicates that BART issued 255 prohibition orders that year. Five of the alleged violators contested the order. The report reflects a reduction in the issuance of prohibition orders in the areas of robbery, batteries/threats involving patrons and threats/batteries involving employees (including officers). These violent crimes committed on the district property declined from 158 in 2014, to 123 in 2015. At the same time, overall ridership increased.

The report reflects that 25 percent of the prohibition orders in 2015 were related to domestic violence, a slight increase from 2014. The report attributes this to stations being used for a child custody exchange location for the courts. These meetings sometimes lead to domestic violence. These incidents may decrease with the authority granted to BART police to issue emergency protective orders at stations under SB 1154, along with continued outreach and public awareness efforts.

The 2016 report is being completed and not yet available.

This bill makes BART's authority to issue these prohibition orders permanent.

3) **Argument in Support:** According to *BART*, the sponsor of this bill, "In 2011, AB 716 (Dickerson) authorized the creation of a three-year pilot program allowing BART to exclude individuals from using the system for specified periods of time, depending on the nature and frequency of offenses. BART began issuing prohibition orders in 2013, and although the issuance of prohibitions [sic.] orders has fluctuated, there has been an overall decrease in violent crimes committed on BART property.

"Your introduction of AB 730 would allow BART to permanently continue this important effort to reduce crime and make BART a safer system for riders and employees. Prohibition orders are one of many safety measures BART utilizes and have been a great asset to implementing an effective public safety strategy."

4) **Related Legislation**: AB 468 (Santiago) would authorize the Los Angeles County Metropolitan Transportation Authority to issue a prohibition order to any person cited for committing one or more of certain prohibited acts in specified transit facilities. SB 468 was amended by the author and re-referred to the Assembly Committee on Transportation.

5) **Prior Legislation**:

   a) SB 1154 (Hancock) Chapter 559, Statutes of 2014, in part, extended the sunset on the law that allows BART to issue prohibition orders denying passengers committing certain illegal behaviors entry onto transit vehicles and facilities, until January 1, 2018.

b) AB 716 (Dickinson) Chapter 534, Statutes of 2011, in part, authorized the San Francisco Bay Area Rapid Transit District, until January 1, 2015, to issue prohibition orders denying passengers committing certain illegal behaviors entry onto transit vehicles and facilities. AB 716 also removed the sunset provisions for Sacramento Regional Transit District and the Fresno Area Express, making their related authority permanent.

c) SB 1561 (Steinberg) Chapter 528, Statutes of 2008, authorized the Sacramento Regional Transit District and the Fresno Area Express, until January 1, 2012, to issue prohibition orders denying passengers committing certain illegal behaviors entry onto transit vehicles and facilities. SB 1561 also described the kinds of behaviors according to their potential severity and prescribes the progressive penalties based upon the severity and frequency of violations.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco Bay Area Rapid Transit District (Sponsor)

Opposition

None

Analysis Prepared by: Cheryl Anderson / PUB. S. /

Date of Hearing: April 4, 2017
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 736 (Gipson) – As Amended March 27, 2017

SUMMARY: Imposes graduated civil fines on firearms dealers for violations of specified firearms business regulations. Specifically, **this bill**:

1) Provides that in addition to, or in lieu of, the removal of a firearms dealer from the list of licensed persons or the forfeiture of a firearms dealer license, the California Department of Justice (DOJ), or the licensing authority in a jurisdiction that has adopted an inspection program, may impose a civil fine on a dealer under the following circumstances:

   a) When the dealer has received notification from the department or local authority regarding a violation of specified firearms dealer regulations and has failed to take corrective action as required within the time specified in the notice; and

   b) The dealer has knowingly or with gross negligence violated a specified firearms dealer regulation.

2) Specifies the amount of the civil fine authorized shall be as follows:

   a) For a first violation, a civil fine of five hundred dollars ($500);

   b) For a second violation that occurs within five years of a previous violation for which a fine was imposed pursuant to this section, a civil fine of one thousand dollars ($1,000); and

   c) For a third or subsequent violation that occurs within five years of a previous violation for which a fine was imposed pursuant to this section, a civil fine of five thousand dollars ($5,000).

3) Provides that the Attorney General, a district attorney, or a city attorney may bring an action to impose a civil fine or other action against a firearms retailer.

EXISTING LAW:

1) Specifies grounds for forfeiture of a license to sell firearms. Provides for forfeiture of a license for violations of the following provisions related to the sale of firearms: (Pen. Code, § 26800.)

   a) Rules related to the location of a licensee's business, types of firearms, and acceptance of delivery;

b) Regulations related to the display of the license;

c) Requirements for the delivery of a firearm by a dealer;

d) Rules related to the display of handguns, imitations handguns, and where advertisements are prohibited;

e) Rules related to the prompt processing of firearms transactions;

f) Regulations regarding the required posting of warnings;

g) Rules related to the delivery of firearms and the valid firearm safety certificates;

h) Regulations about proof of California residence;

i) Requirement that recipients are required to perform safe handling;

j) Requirement to offer a firearm pamphlet;

k) Prohibition of collusion by a licensee;

l) Rule regarding the posting of charges and fees;

m) Prohibition against misstatement of government fees; and

n) Rules about inventory and reports of loss or theft.

2) Provides that DOJ may inspect dealers to ensure compliance with specified firearms provisions. (Pen. Code, § 26720, subd. (a).)

3) Specifies that DOJ may assess an annual fee, not to exceed one hundred fifteen dollars ($115), to cover the reasonable cost of maintaining the list of persons licensed to sell firearms at retail, including the cost of inspections. (Pen. Code, § 26720, subd. (b).)

4) States that dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program. (Pen. Code, § 26720, subd. (c).)

5) States that, in general and subject to exceptions, the business of a firearms licensee shall be conducted only in the buildings designated by the business license: (Pen. Code § 26805, subd. (a).)

a) Provides an exception that a person licensed, as specified, may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at any gun show or event if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business shall be entitled to conduct business as authorized at any gun show or event in the state, without regard to the

jurisdiction within this state that issued the license provided the person complies with all applicable laws, including, but not limited to, the waiting period specified, and all applicable local laws, regulations, and fees, if any; (Pen. Code § 26805, subd. (b)(1).)

b) Provides an exception for a person licensed as specified may engage in the sale and transfer of firearms other than handguns, at specified events, subject to the prohibitions and restrictions contained in those sections; (Pen. Code § 26805, subd. (c)(1).)

c) Provides an exception for a person licensed, as specified, who may also accept delivery of firearms other than handguns, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified; (Pen. Code § 26805, subd. (c)(2).)

d) Provides that a firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places: (Pen. Code § 26805, subd. (d).)

   i) The building designated in the license;

   ii) The places specified as express exemptions; and

   iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

6) Provides a person conducting specified firearms business shall publicly display the person's license issued, or a facsimile thereof, at any gun show or event, as specified in this subdivision. (Pen. Code § 26805, subd. (b)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The number of gun dealers in the state has significantly grown in recent years and they are subject to infrequent inspections and oversight. Federal law enforcement inspects gun dealers once per year on average. Because of their access to a huge quantity of weapons, corrupt and negligent gun dealers are a significant source of guns sold on the illegal market. The Department of Justice should have the ability to fine and reprimand gun dealers that are out of compliance with the law without either taking no action, or revoking their license and drive them out of business."

2) **Imposition of Civil Fines for Violations of Rules Related to Failures of a Firearms Dealer to Follow Mandated Regulations:** This bill proposes new fines related to violations of rules imposed upon licensees. The fines suggested are up to a $500 civil fine for simple violations, and up to $5,000 fines for violations when the licensee previously received written notification from DOJ regarding the breach and failed to take corrective action, or DOJ determines that the licensee committed the breach knowingly or with gross negligence. The grounds for forfeiture include a wide range of conduct, including the following: properly displayed license, proper delivery of a firearm, properly displaying firearms, prompt processing of firearms transactions, posting of warning signs, safety certificate compliance,

checking proof of California residence, safe handling demonstrations, offering a firearms pamphlet, and many more.

3) **Intermediate Penalties**: Under current law DOJ or equivalent agency may only permanently revoke a dealer's license for a violation of regulations placed on firearms dealers for things as simple as posting needed warnings, or as serious as not properly checking for safety certificate compliance. This bill would allow for intermediate sanctions in the form of graduate fines as penalties. These intermediate sanctions would allow for less severe penalties than a permanent revocation of the dealer's license.

4) **Limited Resourced to Oversee Gun Sales:** Law enforcement has limited resources to oversee the more than 2,300 licensee in our state. A 2010 *Washington Post* report found that, due to limited staffing, the federal Bureau of Alcohol, Tobacco and Firearms (ATF) could only inspect gun dealers once per decade on average. A recent *New York Times* investigative report, "How They Got Their Guns," found that, since 2009, 15 mass shootings were committed with *legally* purchased firearms. A study by ATF found that 60% of legally purchased weapons found at crime scenes came from 1% of gun dealers. Later studies have estimated that 90% of legally purchased guns used in the commission of a crime were from 5% of gun dealers. In 2014, 2,935 Californians were killed by firearms.

5) **Argument in Support**: According to the *California Chapters of the Brady Campaign to Prevent Gun Violence,* "AB 736 seeks to provide needed enforcement tools for addressing licensed firearm dealer violations. Under existing law, gun dealers must meet certain requirements regarding the display, sale or storage of firearm, the display of their license and the posting of specified notices and warnings. Currently, the only recourse for violating these requirements is the permanent revocation of a dealer's license through a lengthy procedure. This all-or-nothing approach is unworkable as license revocation is an extreme measure that is seldom used for lesser violations, but a dealer with significant violations can continue to engage in firearm transactions during the protracted revocation process.

"AB 736 will address this problem by providing intermediate and escalating enforcement actions against licensed firearm dealers. Specifically, the bill would enable the Department of Justice, a district attorney, or a city attorney to impose a civil fine of $500 for the first violation, a $1,000 civil fine and a 30-day suspension of license for a second violation within five years, and a $5,000 civil fine and permanent revocation of license for a third or subsequent violation within five years.

"The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has been grossly underfunded for years and the problem will likely become worse under the Trump administration and current Congress. A *Washington Post* investigation in 2010 found that, as a result of inadequate staffing, ATF was able to inspect less than 10% of FFL's in 2009 and, on average, dealers are inspected only once a decade.[i] In light of this deficiency, California needs more enforcement tools that can be applied in a timely matter. An incremental approach, such as the civil fine and penalty structure outlined in AB 736, provides opportunities for correction, as well as appropriate levels of accountability and consequence.

"The California Brady Chapters support our state's strong gun laws, including the regulations imposed on licensed firearm dealers. We believe these laws have contributed to the steep decline in California's firearm death rate since 1993. To the extent that better compliance is

fostered through incremental, appropriate and certain legal consequences, even more lives may be saved. The California Brady Chapters are pleased to support AB 736 and respectfully ask for your AYE vote."

6) **Argument in Opposition**: According to the *National Shooting Sports Foundation*, "Generally, such violations are inadvertent record keeping or operating errors by a retailer or retailer's employee, and there is no intent to commit a violation.

"Most California firearms dealers are small businesses that could not withstand the imposition of civil fines for violations, no matter how minor, as proposed in AB 736.

"There is legitimate concern that governmental entities seeking revenue could use the provisions of AB 736 to augment their funding. One only needs to review the past abuses of the asset forfeiture laws to understand why allowing the unconstrained imposition of civil fines for violations of licensing provisions, even if very minor, in a matter of substantial concern.

"The primary effect of AB 736 would be to harm lawful firearms retailers by decreasing their net revenue, thus making fewer funds available for business operations.

"As a result, their businesses would suffer, many could not continue to support the same number of employees, applicable sales and income tax revenue to the state and local governments would be less, and California's reputation of being anti-business would continue to grow."

7) **Prior Legislation**: AB 2459 (McCarty) of the 2015-2016 Legislative Session, would have imposed duties and responsibilities upon firearms retailers as specified (including civil fines substantially similar to this bill). AB 2459 failed passage in the Assembly Privacy and Consumer Protection Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Law Center to Prevent Gun Violence (Sponsor)
California Chapters of the Brady Campaign to Prevent Gun Violence

Opposition

Gun Owners of California
National Shooting Sports Foundation

Analysis Prepared by: Gabriel Caswell / PUB. S. /

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[i] Sari Horwitz and James V. Grimaldi, *ATF's Oversight Limited in Face of Gun Lobby*, Wash. Post, Oct. 26, 2010, at http://www.washingtonpost.com/wp-dyn/content/article/2010/10/25/AR2010102505823.html?sub=AR.

Date of Hearing: April 4, 2017
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 748 (Ting) – As Introduced February 15, 2017

SUMMARY: Requires each department or agency that employs peace officers and elects to deploy body-worn cameras to develop a policy and make the policy publicly accessible, as specified. Specifically, **this bill**:

1) Provides that no later than July 1, 2018, each department or agency that employs peace officers and that elects to require those peace officers to wear body cameras shall develop a policy setting forth the procedures for, and limitations on, public access to recordings taken by body-worn cameras.

2) Requires the body-worn camera policy to allow public access to the fullest extent required by the California Public Records Act (CPRA).

3) Provides that the department or agencies that elect to require officers to wear body-worn cameras shall conspicuously post the policy on its Internet Website.

EXISTING LAW:

1) Specifies that no public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family. (Gov. Code, § 3307.5, subd. (a).)

2) States that based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. (Gov. Code, § 3307.5, subd. (b).)

3) States that after the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. (Gov. Code, § 3307.5, subd. (b).)

4) Provides that the court may impose a civil penalty in an amount not to exceed five hundred dollars ($500) per day commencing two working days after the date of receipt of the notification to cease and desist. (Gov. Code, § 3307.5, subd. (b).)

5) Establishes the CPRA and provides that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's

business is a fundamental and necessary right of every person in this state. (Gov. Code, § 6250 et seq.)

6) Defines "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." "Writing" means "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." (Gov. Code, § 6252.)

7) Makes public records open to inspection at all times during the office hours of the state or local agency. Every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Gov. Code, § 6253, subd. (a).)

8) Provides that, except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. (Gov. Code, § 6253, subd. (b).)

9) Requires the public agency, when a member of the public requests to inspect a public record or obtain a copy of a public record, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, to do all of the following, to the extent reasonable under the circumstances:

   a) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

   b) Describe the information technology and physical location in which the records exist; and,

   c) Provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 6253.1, subd. (a).)

10) States that the above provision does not apply when the public agency determines that the request should be denied and bases that determination solely on an exemption listed in section 6254, as specified. (Gov. Code, § 6253.1, subd. (d).)

11) States that, except as in other sections of the CPRA, this chapter does not require the disclosure of specified records, which includes among other things: records of complaints to, or investigations conducted by specified agencies, including any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for

correctional, law enforcement, or licensing purposes. (Gov. Code, § 6254.)

12) Provides, notwithstanding any other law, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

   a) The full name and booking information of all persons arrested;

   b) Calls for service logs and crime reports, subject to protections for protecting the confidentiality of victims; and,

   c) The addresses of individuals arrested by the agency and victims of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator. (Gov. Code, § 6254, subd. (f).)

13) Requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 6255.)

14) Authorizes any person to institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. (Gov. Code, § 6258.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Transparency between law enforcement and the communities they protect is critical to establishing and maintaining good relationships. For those law enforcement agencies that have chosen to deploy body cameras on their officers, this bill simply requires these agencies to adopt and post a policy on how the public may seek access to the body camera recordings. Too often, confusion about public access to these recordings exacerbates sensitive or controversial situations."

2) **Background**: A recent report released by U.S. Department of Justice's Office of Community Oriented Policing Services and the Police Executive Research Forum studied the use of body-worn cameras by police agencies. This research included a survey of 250 police agencies, interviews with more than 40 police executives, a review of 20 existing body-camera policies, and a national conference at which more than 200 police chiefs, sheriffs, federal justice representatives, and other experts shared their knowledge of and experiences with body-worn cameras. The report shows that body-worn cameras can help agencies demonstrate transparency and address the community's questions about controversial events. Among other reported benefits are that the presence of a body-worn camera have helped strengthen officer professionalism and helped to de-escalate contentious situations, and when questions do arise following an event or encounter, police having a video record helps lead to

a quicker resolution. (Miller and Toliver, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, Police Executive Research Forum (Nov. 2014).)

The report recommends that each agency develop its own comprehensive written policy to govern body-worn camera usage, that includes the following:

a) Basic camera usage, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;

b) The designated staff member(s) responsible for ensuring cameras are charged and in proper working order, for reporting and documenting problems with cameras, and for reissuing working cameras to avert malfunction claims if critical footage is not captured;

c) Recording protocols, including when to activate the camera, when to turn it off, and the types of circumstances in which recording is required, allowed, or prohibited;

d) The process for downloading recorded data from the camera, including who is responsible for downloading, when data must be downloaded, where data will be stored, and how to safeguard against data tampering or deletion;

e) The method for documenting chain of custody;

f) The length of time recorded data will be retained by the agency in various circumstances;

g) The process and policies for accessing and reviewing recorded data, including the persons authorized to access data and the circumstances in which recorded data can be reviewed;

h) Policies for releasing recorded data to the public, including protocols regarding redactions and responding to public disclosure requests; and,

i) Policies requiring that any contracts with a third-party vendor for cloud storage explicitly state that the videos are owned by the police agency and that its use and access are governed by agency policy.

(*Id.* at pp. 37-38.)

This bill implements the recommendation that law enforcement agencies that use body-worn cameras to have a policy as to the procedures for, and limitations on, public access to recordings taken by body-worn cameras, provided that those procedures and limitations are in accordance with state law that governs public access to records.

3) **Prior Legislation:**

a) AB 2533 (Santiago), of the 2015-2016 Legislative Session, required a public safety officer to be provided a minimum of three business days' notice before a public safety department or other public agency releases on the Internet any audio or video of the officer recorded by the officer. AB 2353 failed passage in the Senate Public Safety Committee.

b) AB 1957 (Quirk), of the 2015-2016 Legislative Session, would have required a state or local law enforcement agency to make available, upon request, footage from a law enforcement body-worn camera 60 days after the commencement of an investigation into misconduct that uses or involves that footage. AB 1957 failed passage on the Assembly Floor.

c) AB 1940 (Cooper), of the 2015-2016 Legislative Session, would exempt body-worn camera recordings that depict the use of force resulting in serious injury or death from public disclosure pursuant to the act unless a judicial determination is made, after the adjudication of any civil or criminal proceeding related to the use of force incident, that the interest in public disclosure outweighs the need to protect the individual right to privacy. AB 1940 failed passage in the Senate Public Safety Committee

d) AB 66 (Weber), of the 2015-2016 Legislative Session, established statewide policies and guidelines for law enforcement agencies that require its officers to wear body-worn cameras. AB 66 was not taken up in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
California Attorneys for Criminal Justice
California Public Defenders Association

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. /

Date of Hearing: April 4, 2017
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 757 (Melendez) – As Amended March 13, 2017

SUMMARY: Defines "good cause" for the issuance of a license to carry a concealed handgun to include, but not limited to, self-defense, defending the life of another, or preventing crime in which human life is threatened; provides guidelines to determine the presence or absence of "good cause"; and requires the issuance of a license to carry a concealed handgun if the applicant meets specified requirements. Specifically, **this bill**:

1) Provides that when a person applies for a license to carry a handgun the sheriff of the county or chief of a municipal police department shall issue a license to that person upon proof of all of the following

    a) The applicant is of good moral character;

    b) Good cause exists for issuance of the license;

    c) The applicant is a resident of the city, county, or city and county; and,

    d) The applicant has completed a specified course of firearms training.

2) States that "good cause" for the issuance of a license to carry a handgun includes, but is not limited to, self-defense, defending the life of another, or preventing crime in which human life is threatened.

3) Provides that if the applicant's stated cause is self-defense, defending the life of another, or preventing crime in which human life is threatened, he or she shall not be required to prove the existence of specific circumstances regarding his or her stated "good cause."

4) Provides that if an applicant's stated cause is not self-defense, defending the life of another, or preventing crime in which human life is threatened, the sheriff or chief or other head of a municipal police department of a city or city and county may, by considering the following, determine whether the applicant has stated good cause:

    a) Inalienable rights guaranteed by the California Constitution, including the declaration of rights providing that all people are by nature free and independent and have inalienable rights, and that among these are enjoying and defending liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy; and,

    b) The value of concealed firearms in deterring violent crime.

EXISTING LAW:

1) Provides a county sheriff or municipal police chief may issue a license to carry a firearm capable of being concealed (CCW) upon the person upon proof that:

   a) The person applying is of good moral character (Pen. Code, § 12050, subd. (a)(1)(A));

   b) Good cause exists for the issuance (Pen. Code, § 12050, subd. (a)(1)(A));

   c) The person applying meets the appropriate residency requirements (Pen. Code, § 12050, subd. (a)(1)(D)); and,

   d) The person has completed the appropriate training course (Pen. Code, § 12050, subd. (E)).

2) Provides that the license may either:

   a) Allow the person to carry a concealed firearm on his or her person (Pen. Code, § 12050, subd. (a)(1)); or,

   b) Allow the person to carry a loaded and exposed firearm in a county whose population is less than 200,000 persons according to the most recent federal decennial census. (Pen. Code, § 12050, subd. (a)(1).)

3) Provides that a CCW license is valid for up to two years, three years for judicial officers, or four years in the case of a reserve or auxiliary peace officer. (Pen. Code, § 12050, subd. (a)(2).)

4) Provides that a license may include any reasonable restrictions or conditions that the issuing authority deems warranted, which shall be listed on the license. (Pen. Code § 12050, subds. (b) and (c).)

5) Provides that the fingerprints of each applicant are taken and submitted to the Department of Justice. Provides criminal penalties for knowingly filing a false application for a concealed weapon license. (Pen. Code, § 12051, subd. (b).)

6) Provides that a person may lawfully possess a loaded firearm in his or her place of business or residence. (Pen. Code, § 12031, subd. (h)(l).)

7) Makes it generally unlawful to carry a concealed handgun or a loaded firearm in public and in vehicles. (Pen. Code, § 12025 and 12031.)

8) Specifies that applications for CCW licenses, applications for amendments to CCW licenses, amendments to CCW licenses, and CCW licenses under this article shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. (Pen. Code, § 26175, subd (a)(1).)

9) Provides that the Attorney General shall convene a committee composed of one representative of the California State Sheriffs' Association, one representative of the

California Police Chiefs Association, and one representative of the Department of Justice to review, and as deemed appropriate, revise the standard application form for CCW licenses. The committee shall meet for this purpose if two of the committee's members deem that necessary. (Pen. Code, § 26175, subd (a)(2).)

10) States that the application shall include a section summarizing the statutory provisions of state law that result in the automatic denial of a license. (Pen. Code, § 26175, subd (b).)

11) Provides that the standard application form for CCW licenses shall require information from the applicant, including, but not limited to, the name, occupation, residence, and business address of the applicant, the applicant's age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. (Pen. Code, § 26175, subd (c).)

12) Specifies that applications for licenses shall be filed in writing and signed by the applicant. (Pen. Code, § 26175, subd (d).)

13) Provides that applications for amendments to CCW licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought and the reason for desiring the amendment. (Pen. Code, § 26175, subd (e).)

14) States that the forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application. (Pen. Code, § 26175, subd (f).)

15) Provides that an applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form, except to clarify or interpret information provided by the applicant on the standard application form. (Pen. Code, § 26175, subd (g).)

16) States that the standard application form is deemed to be a local form expressly exempt from the requirements of the Administrative Procedures Act. (Pen. Code, § 26175, subd (h).)

17) Provides that any CCW license issued upon the application shall set forth the licensee's name, occupation, residence and business address, the licensee's age, height, weight, color of eyes and hair, and the reason for desiring a license to carry the weapon, and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number, and the caliber. The license issued to the licensee may be laminated. (Pen. Code, § 26175, subd (i).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Under current law, there is an unequal application of the law across California. There are drastic and noticeable differences between the 58 counties in California. In 2015, Sacramento County had 6,824 CCW permits, while Los Angeles County had 494 and San Francisco County had only 4, according to the California Department of Justice. To help address this gap, AB 757 will define "good cause" so that Sheriffs will have a clear guideline during their issuance. Many sheriffs already use self-defense as an appropriate "good cause," while others make applicants prove an eminent

threat or a prior incident. However, this means is very reactionary and does not fully secure one's desire for appropriate self-defense.

2) **Background**: *Peruta v. County of San Diego*: For approving a license to carry a concealed firearm, the County of San Diego required that an applicant show that good cause exists for issuance of the license and provided that generalized self defense could not serve as good cause. Mr. Peruta, a San Diego County resident, contested the condition as unconstitutionally abridging his Second Amendment right to bear arm. The U.S. District Court for the Southern District of California ruled against Mr. Peruta in a summary judgment, and Mr. Peruta appealed. In a 2-to-1 decision, the U.S. Court of Appeals for the Ninth Circuit held that "the Second Amendment does require that the states permit *some form* of carry for self-defense outside the home." (*Peruta v. County of San Diego* (2014) 742 F.3d 1144, 1172.) The majority went on to state that "concealed carry *per se* does not fall outside the scope of the right to bear arms; but insistence upon a particular mode of carry does." (*Ibid.*) The dissent felt that the county's "good cause" policy fell squarely within the Supreme Court's definition of a presumptively lawful regulatory measure.

   On February 27, 2014, the Department of Justice, on behalf of the state, filed a motion to for *en banc* review of the decision. On June 9, 2016 the *en banc* court affirmed the lower court ruling, saying that, "there is no Second Amendment right for members of the general public to carry concealed firearms in public."

3) **Argument in Opposition**: According to the *California Chapters of the Brady Campaign to Prevent Gun Violence*, "Existing law gives sheriffs and chiefs of municipal police departments the discretion to issue permits for the carrying of concealed and loaded firearms (CCW permits). Law enforcement must find that good cause exists, that the applicant is of good moral character, is a resident or employed within the jurisdiction, and has completed a course of training, This bill would for all practical purposes eliminate the need to demonstrate good cause.

   "AB 757 would define 'good cause' for the issuance of a CCW permit to include self-defense, defending the life of another, or preventing crime in which human life is threatened. Under this provision, a permit applicant shall not be required to prove the existence of specific circumstances regarding his or her stated good cause. Furthermore, the bill allows a sheriff or chief to simple determine good cause by considering Article 1 of the California constitution or "the value of concealed firearms in deterring violent crime.

   "The 'good cause' standard is a reasonable standard. The desire to carry a concealed firearm is often justified by the need for self-defense or protection of others. For issuance of a permit, an applicant should have to affirmatively demonstrate that a *real* threat exists, rather than an imaginary or theoretical threat. If the good cause definition contained in AB 757 were to be applied, then any person wanting to carry a concealed weapon would have to be issued a permit. The only remaining constraint on obtaining a permit would be the ability to pass a criminal and mental health background check, which is a very low standard for carrying a loaded, hidden gun in public. The Brady Campaign believes that sheriffs and chiefs must be allowed to retain discretion to deny CCW permits when they believe that no credible threat exists and that it is in public interest to do so."

4) **Argument in Support:** According to the *California Rifle and Pistol Association*, "Under current law, a county sheriff or municipal police chief uses their own discretion to decide if an applicant qualifies for a concealed carry weapon (CCW) permit. Aside from background checks and meeting the appropriate requirements, the most challenging obstacles are for applicants to prove "good moral character" and "good cause." Existing code leaves "good cause" undefined. Do to this oversight, law enforcement agencies are allowed to use whatever discretion they choose to determine which applicants have provided sufficient justification.

"Currently, citizens seeking to apply for a CCW permit face uncertainty and confusion throughout the process. The omission of defining 'good cause' has resulted in the unequal application of the law across the state and arbitrary denial of CCW permits to many Californians. Depending on the county someone resides in, an individual may be denied their request for a CCW despite passing the background check and meeting all the other requirements. In some communities throughout California, the standard policy is to deny, essentially, all requests for CCW. AB 757 would define the term 'good cause' in the penal code and ensure that all Californians are afforded equal protection under the law. Over the years, California's restrictive CCW laws prompted a number of lawsuits, one of which was recently appealed to the United States Supreme Court and another was recently filed in Los Angeles. California may continue to face costly legal challenges for years to come until something is changed."

5) **Prior Legislation:**

a) AB 871 (Jones), of the 2013-2014 Legislative Session, would have provided that "good cause" for the issuance of a license to carry a concealed handgun by a sheriff of a county or a chief of a municipal police force includes, but is not limited to, personal protection or self-defense. AB 871 failed passage in this committee.

b) AB 1563 (Donnelly), of the 2013-2014 Legislative Session, would have required the Department of Justice Requires DOJ to issue a license to carry a concealed handgun upon the person within 30 days of submission of a completed application, as specified and with certain exceptions. AB 1563 failed passage in this committee.

c) AB 2376 (Halderman), of the 2011-2012 Legislative Session, would have defined "good cause" for the issuance of a license to carry a concealed handgun, by a sheriff of a county or a chief of a municipal police force, to include, but not limited to, if the applicant has a report on file with a law enforcement agency evidencing that he or she is a victim of a hate crime. AB 2376 failed passage in this committee.

d) AB 2615 (Jones), of the 2011-2012 Legislative Session, would have provided that "good cause" for the issuance of a license to carry a concealable firearm includes, but is not limited to, self-defense and personal protection. AB 2615 failed passage in this committee.

e) AB 357 (Knight), of the 2009-2010 Legislative Session, would have deleted the "good cause" requirement for the issuance of a license to carry a concealed handgun upon the person and would have required issuance if the applicant was of good moral character and met other criteria relating to residency and training. AB 357 failed passage in this

committee.

f) AB 2053 (Miller), of the 2009-2010 Legislative Session, would have defined "good cause" for the issuance of a license to carry a concealed handgun upon the person to include self-defense, defending the life of another, or preventing crime in which human life is threatened. AB 2053 failed passage in this committee.

g) AB 462 (Haynes), of the 2003-2004 Legislative Session, would have defined "good cause" for the issuance of a license to carry a concealed handgun upon the person to include if the applicant has a report on file with a law enforcement agency evidencing that he or she is a victim of domestic violence or stalking and has obtained a restraining order against a specified individual or is the victim of a hate crime. AB 462 failed passage in this committee.

h) SB 1283 (Haynes), of the 2001-2002 Legislative Session, would have defined "good cause" for the issuance of a license to carry a concealed handgun upon the person to include a victim of domestic violence who has obtained a restraining order or is a victim of a hate crime. SB 1283 failed passage in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

National Rifle Association
Firearms Policy Coalition
California Rifle and Pistol Association
California Association of Licensed Investigators
Liberal Gun Club
One Private Citizen

Opposition

California Chapters of the Brady Campaign to Prevent Gun Violence
Law Center to Prevent Gun Violence

Analysis Prepared by: Gregory Pagan / PUB. S. /

Date of Hearing: April 4, 2017
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1091 (Quirk) – As Introduced February 17, 2017
As Proposed to be Amended in Committee

SUMMARY: Makes it a crime to willfully release, outdoors, balloons made of electrically conductive material, regardless of whether the outdoor release is part of a public or civic event, promotional activity, or product advertisement.

EXISTING LAW:

1) Prohibits the sale or distribution of any balloon that is constructed of electrically conductive material, and filled with a gas lighter than air without:

   a) Affixing an object of sufficient weight to the balloon or its appurtenance to counter the lift capability of the balloon;

   b) Affixing a statement on the balloon, or ensuring that a statement is affixed, that warns the consumer about the risk if the balloon comes in contact with electrical power lines; and,

   c) A printed identification of the manufacturer of the balloon. (Penal Code § 653.1(a).)

2) Prohibits the sale or distribution of any balloon filled with a gas lighter than air that is attached to an electrically conductive string, tether, streamer, or other electrically conductive appurtenance. (Penal Code § 653.1(b).)

3) Prohibits the sale or distribution of any balloon that is constructed of electrically conductive material and filled with a gas lighter than air and that is attached to another balloon constructed of electrically conductive material and filled with a gas lighter than air. (Penal Code § 653.1(c).)

4) Prohibits any person or group from releasing balloons made of electrically conductive material and filled with a gas lighter than air, outdoors as part of a public or civic event, promotional activity, or product advertisement. (Pen. Code, § 653.1, subd. (d).)

5) Punishes a violation of the above prohibited conduct as an infraction with a fine of not more than $100, unless the person has twice been convicted of any of the above. A third or subsequent conviction is a misdemeanor. (Pen. Code, § 653.1, subd. (e).)

6) States that this prohibition does not apply to manned hot air balloons, or to balloons used in governmental or scientific research projects. (Pen. Code, § 653.1, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "As each of us who has experienced power outages knows, loss of electricity means a halt and disruption to almost every kind of activity we engage in every day. Business operations and manufacturing can be halted, traffic signals and street lights can stop working, lights and computers at home can turn off and can even be damaged. Metallic balloons can cause power outages and cause a significant portion of preventable power outages. These shiny metallic balloons are made of electrically conductive material, and can cause significant damage to power lines and equipment when they come into close proximity to power lines and cause an electric arc. Costs to repair damaged equipment from just a single metallic balloon number in the thousands of dollars. And the loss of power due to metallic balloons represents a significant cost to California's economy on the order of tens of millions of dollars.

   "Current law only prohibits the release of metallic balloons as part of a 'public or civic event, promotional activity, or product advertisement.' AB 1091 clarifies that the release of metallic balloons is completely prohibited. Metallic balloons have an outsized impact on our electrical grid, and are a product which must be used responsibly."

2) **Balloons and Power Outages**: There are two types of balloons in use today — Mylar and latex. Mylar balloons are made with Mylar nylon and typically coated with a metallic finish. If these balloons are not weighted and they are released, they can travel many miles and end up tangling in power lines far away from where they were released. When these electrically conductive metallic balloons come into contact with electrical lines, they often cause power outages. In February of 2016, it was reported that in an average year, PG&E will have 300 outages caused by metallic balloons, affecting nearly 165,000 homes. (http://www.sanluisobispo.com/news/weather/weather-watch/article58874343.html [as of March 30, 2017].)

   Mylar balloons also pose a fire hazard which can result in injuries. (<http://www.dailybreeze.com/general-news/20130625/mylar-balloon-cause-of-5-acre-vegetation-fire-in-chino-hills> [as of March 26, 2017].)

   Moreover, Mylar is not a biodegradable material, and these balloons end up littering wilderness preserves. Balloons blown from Las Vegas end up bursting and falling to the floor of Death Valley. Balloons blown over the ocean can end up being eaten by sea life, who mistake them for food. This clogs their intestinal track. Latex balloons, on the other hand, are biodegradable (because they are made of natural rubber). (<http://www.sanluisobispo.com/news/weather/weather-watch/article58874343.htmll> [as of March 30, 2017].)

   This bill would ban any willful release of Mylar balloons in an effort to reduce resultant power outages and fires. Relatedly, it could also decrease the negative impact that Mylar balloons have on wildlife.

Argument in Support: According to the *California Municipal Utilities Association*, "Last year CMUA sponsored Assembly Bill 2709 (Quirk) that sought to prohibit metallic balloons from being sold in California, under specified conditions. AB 2709, passed this Committee on a vote of 5-2. This year, CMUA supports AB 1091, that would update the Penal Code to clarify that under no conditions is a metallic balloon allowed to be released outdoors. Metallic balloons conduct electricity, and although current law requires these balloons be sold attached to a weighted tether, each year, thousands of power outages in California are directly attributable to drifting metallic balloons colliding with a power line, and resulting in power outages that can affect thousands of electric utility customers, resulting in an outage that can last for many hours, disrupting the lives of Californians at home as well as bringing business to a halt.

"In 2015, the state's five largest electric utilities experienced over 1,800 power outages caused by electrically conductive balloons. Since 2013, metallic balloons were identified as the cause of two wildfires and one brush fire, burning a total of 11,500 acres."

3) **Prior Legislation**:

a) AB 2709 (Quirk), of the 2015-2016 Legislative Session, would have made it a crime to sell or distribute any balloon constructed of electrically conductive material or any balloon that is attached to an electrically conductive material. AB 2709 would have also made it a crime to release, outdoors, balloons made of electrically conductive material, regardless of whether the outdoor release is part of a public or civic event, promotional activity, or product advertisement. AB 2709 would have exempted specified balloons from these provisions, including balloons that are not designed to be buoyant in ambient air when filled with any gas. AB 2709 was held in the Assembly Committee on Appropriations.

b) SB 1499 (Scott), of the 2007-2008 Legislative Session, would have increased the fine for a violation of those provisions punished as an infraction. SB 1499 would have further specified the type of weight that must be attached to the balloon and the specifications for the required warning, and would have required that the consumer be provided a separate warning notice, as specified. SB 1499 would also have prohibited a manufacturer or distributor from sending or shipping these types of balloons to retailers without the shipment containing a notice describing the retailer's responsibilities. SB 1499 was vetoed by the Governor.

c) SB 1990 (Ayala) Chapter 1559, Statutes of 1990, prohibited the sale or distribution of a balloon which is either constructed of electrically conductive material or is attached to electrically conductive string, tether, streamer, or other electrically conductive appurtenance, unless a specified weight and consumer warning regarding powerlines are affixed to the balloon and the manufacturers identification printed on it.

REGISTERED SUPPORT / OPPOSITION:

Support

California Municipal Utilities Association
California State Association of Electrical Workers

Coalition of California Utility Employees
Southern California Edison

Opposition

None

Analysis Prepared by: Cheryl Anderson / PUB. S. /

Amended Mock-up for 2017-2018 AB-1091 (Quirk (A))

Mock-up based on Version Number 99 - Introduced 2/17/17
Submitted by: Cheryl Anderson, Assembly Committee on Public Safety

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 653.1 of the Penal Code is amended to read:

653.1. (a) A person shall not sell or distribute any balloon that is constructed of electrically conductive material, and filled with a gas lighter than air without:

(1) Affixing an object of sufficient weight to the balloon or its appurtenance to counter the lift capability of the balloon.

(2) Affixing a statement on the balloon, or ensuring that a statement is so affixed, that warns the consumer about the risk if the balloon comes in contact with electrical power lines.

(3) A printed identification of the manufacturer of the balloon.

(b) A person shall not sell or distribute any balloon filled with a gas lighter than air that is attached to an electrically conductive string, tether, streamer, or other electrically conductive appurtenance.

(c) A person shall not sell or distribute any balloon that is constructed of electrically conductive material and filled with a gas lighter than air and that is attached to another balloon constructed of electrically conductive material and filled with a gas lighter than air.

(d) A person or group shall not **willfully** release, outdoors, balloons made of electrically conductive material and filled with a gas lighter than air.

(e) Any person who violates subdivision (a), (b), (c), or (d) is guilty of an infraction punishable by a fine not exceeding one hundred dollars ($100). Any person who violates subdivision (a), (b), (c), or (d) who has been previously convicted twice of violating subdivision (a), (b), (c), or (d) is guilty of a misdemeanor.

(f) This section does not apply to manned hot air balloons, or to balloons used in governmental or scientific research projects.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: April 4, 2017
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1098 (McCarty) – As Introduced February 17, 2017

SUMMARY: Requires counties to establish interagency child death review teams to assist local agencies in identifying and reviewing suspicious child deaths, and further requires each county to develop a protocol to be used as a guideline by persons investigating child abuse and neglect. Specifically, **this bill**:

1) Requires counties to establish interagency child death review teams to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies that have case specific information involving child abuse or neglect cases.

2) States that each county shall develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death.

3) Provides that the sharing of best practices among child death review teams is authorized and encouraged to facilitate newly established teams. Child death review teams may also consult the National Center for Child Death Review. The Child Abuse Prevention Center, or both those centers, for direction in establishing or improving a child death review team.

4) Requires the established protocol to include data collection, confidentiality, and reporting provisions.

5) Requires a child death review team to implement a data collection process that includes, but is not limited to, all of the following information about a deceased child:

   a) Race;

   b) Gender;

   c) Cause of death; and,

   d) Age.

6) Requires no less than once every three years, each child death review team to make available to the public findings, conclusions and recommendations of the team, including, but not limited to, aggregate statistical data on the incidences and causes of child deaths.

EXISTING LAW:

1) Allows counties to establish interagency child death review teams to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases, but does not require counties to establish child death review teams. (Pen. Code, § 11174.32.)

2) States that interagency child death teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and non-offending family members receive the appropriate services in cases where a child has expired. (Pen. Code, § 11174.32, subd. (a).)

3) States that each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death. (Pen. Code, § 11174.32, subd. (b).)

4) States that in developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including, but not limited to, the following:

   a) Experts in the field of forensic pathology;

   b) Pediatricians with expertise in child abuse;

   c) Coroners and medical examiners;

   d) Criminologists;

   e) District attorneys;

   f) Child protective services staff;

   g) Law enforcement personnel;

   h) Representatives of local agencies which are involved with child abuse or neglect reporting;

   i) County health department staff who deals with children's health issues; and

   j) Local professional associations of persons described in paragraphs (1) to (9), inclusive. (Pen. Code, § 11174.32, subd. (c).)

5) Clarifies that records exempt from disclosure to third parties pursuant to state or federal law shall remain exempt from disclosure when they are in the possession of a child death review team. (Pen. Code, § 11174.32, subd. (d).)

6) Requires no less than once each year years, each child death review team to make available to the public findings, conclusions and recommendations of the team, including, aggregate statistical data on the incidences and causes of child deaths. In its report, the team is required to withhold the last name of the child that is the subject to a review, except as specified. (Pen. Code, § 11174.32, subd. (f)(1)&(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "It is devastating to see children die, more so by causes that can be prevented. AB 1098 builds upon the great success of our local child death review teams in creating educational campaigns, to educate the public of frequent causes of child deaths. This measure will ensure that we are acting in the interest of our children's safety and protection."

2) **Background**: Child death review teams in California began as informal gatherings of concerned parents and professionals that wanted to take proper steps in order to review child deaths and learn from them in order to save other children's lives.

   In 1988, California legislation was enacted to establish child death review teams in order to investigate suspicious child deaths and facilitate communication among the various entities that could provide useful information for the annual report.

   Today, the Centers for Disease Control and Prevention, recorded over 23,000 infant deaths in the United States for 2014. In California, the Department of Social Services (CDSS) reported that 88 child fatalities resulted from abuse and/or neglect for 2014, but a complete summary of child death reports had not been finalized at the time the data was collected. Despite efforts to produce an annual child death report, there are only an estimated 22 active child death review teams throughout the state, leaving many counties without a reporting mechanism. We believe that one reason for the lack of participation in every county is due to a lack of existing law's explicit requirement to report. It is the intent of this legislation to create uniformity among counties by requiring all to produce an annual child death report in hopes of learning from past deaths and prevent future ones."

   The primary purpose of child death review teams is to prevent future child deaths. At the county level, these teams produce educational materials so that the more common causes of child death can be prevented. For example, according to the author, in Sacramento "The Sacramento County Child Death Review Team, which reviews the deaths of every child that dies in Sacramento County, has used the report's findings in order to create public awareness campaigns. The recommendations have translated to the *Shaken Baby Syndrome Prevention Campaign,* the *Infant Safe Sleep Campaign,* and the *Drowning Prevention Campaign* to reduce preventable deaths." However, each county's experience is different. This is where statewide child death review can help prevent counties from duplicating efforts.

The statewide child death review council is responsible for collecting data and information from the counties and turning it into reports to the public and Legislature. Part of the statutory scheme that created child death review teams included creation of the Child Death Review Council "to coordinate and integrate state and local efforts to address fatal child abuse or neglect, and to create a body of information to prevent child deaths." (Penal Code Section 11174.34(a)(1).) The Child Death Review Council is required to "[a]nalyze and interpret state and local data on child death in an annual report to be submitted to local child death review teams with copies to the Governor and the Legislature, no later than July 1 each year. Copies of the report shall also be distributed to California public officials who deal with child abuse issues and to those agencies responsible for child death investigation in each county. The report shall contain, but not be limited to, information provided by state agencies and the county child death review teams for the preceding year." (Penal Code Section 11174.34(d)(1).) Therefore, a report analyzing the data collected by each local child death review team is currently a public document. Requiring each local child death review team to also make public its own data appears to be consistent with the overall objectives of the teams, i.e., creating a body of information on the causes of child deaths to help prevent such tragedies. Increased transparency may also enhance the public's trust in local child death review.

Some child death review teams create elaborate, comprehensive reports, while other child death review teams do not report anything at all. Because of the wide discrepancy of reporting, the statewide council cannot get a full picture of what is occurring statewide. While all child death review teams are coming to important conclusions about local child fatalities, not all of the review teams are communicating the information to the public, which contradicts the basic premise for having them. How can child death review teams reduce future preventable child deaths if no one knows that child death review teams do? This bill, by mandating child death review teams, would certainly increase the information available to counties and the public.

3) **Prior Legislation**:

a) AB 1737 (McCarty), of the 2015-16 Legislative Session, was almost identical to this bill and would have required each county to establish a child death review team. AB 1737 was held on the Assembly Appropriations suspense file.

b) AB 2083 (Chu), Chapter 297, Statutes of 2016, allows agencies at the request of an interagency child death review team to disclose otherwise confidential including mental health records, criminal history information, and child abuse reports to members of the team for the purpose of investigating child deaths.

c) AB 1668 (Bowen), Chapter 813, Statutes of 2006, provided that interagency child death review team records that are exempt from disclosure to third parties pursuant to state or federal law remain exempt from disclosure when they are in the possession of a child death review team; provides confidentiality provisions for child death review teams; and provided that each child death review team shall annually make available to the public findings, conclusions and recommendations of the team, including aggregate statistical data on the incidences and causes of child death.

REGISTERED SUPPORT / OPPOSITION:

Support

Children Now

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. /

Date of Hearing: April 4, 2017
Consultant: Adam Smith

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1114 (Eduardo Garcia) – As Amended March 30, 2017

SUMMARY: Expands the Supervised Population Workforce Training Program to serve parolees and provides additional guidelines for administering grants. Specifically, **this bill**:

1) Redefines "supervised population" to include those who are on parole and under the jurisdiction of the CDCR.

2) Authorizes multi-year grant awards in the grant program application process.

3) Ensures that non-profit community-based organizations are competitive in applying for funds through the grant program.

4) Ensures that workforce and training needs are addressed for individuals who require "earn and learn" experience in order to obtain entry level jobs.

5) Requires that each application for funding include a partnership agreement between one or more community based organizations that works directly with the supervised population.

6) Requires that funding for project proposals be allocated so that they reflect the role each party plays in a proposed project.

7) Creates preferences for grant applications that include the following:

   a) Participation by one or more employers, including mission-driven social enterprises and non-profit organizations with a track record of employing a workforce comprised of formerly incarcerated individuals, who have demonstrated interest in employing individuals in the supervised population;

   b) A non-profit organization that works directly with the supervised population as the lead or co-lead of the project;

   c) The use of grant funds primarily to support the direct provision of workforce and training services to the supervised population; and

   d) Proposed projects which align with the California Workforce Development Board's strategic plan.

8) Requires applications to set specific purposes for grant funds that align with the services to be provided and the role of each partner as well as define the subset or subsets of the supervised population to be served, with priority given to those with the highest risk of

returning to incarceration.

EXISTING LAW:

1) Establishes the California Workforce Investment Board (now known as the CWDB). (Unemp. Ins. Code, § 14010 et seq.)

2) Establishes the Supervised Population Workforce Training Grant Program to be administered, as specified, by the CWDB. (Pen. Code, § 1234.1.)

3) Requires the CWDB to administer the grant program as follows:

   a) Develop criteria for the selection of grant recipients through a public application process, including, but not limited to, the rating and ranking of applications that meet the threshold criteria and;

   b) Design the grant program application process to ensure all of the following occurs:

      i) Outreach and technical assistance is made available to eligible applicants, especially to small population and rural counties;

      ii) Grants are awarded on a competitive basis;

      iii) Small and rural counties are competitive in applying for funds;

      iv) Applicants are encouraged to develop evidence-based, best practices for serving the workforce training and education needs of the supervised population;

      v) It addresses the education and training needs of both individuals with some postsecondary education who can benefit from services that result in certifications, and placement on a middle skill career ladder, and individuals who require basic education and training to obtain entry level jobs. (Pen. Code, § 1234.2.)

4) Requires the grant program to be competitively awarded through at least two rounds of funding, as specified, and provides that each county is eligible to apply but that a single application may include multiple counties applying jointly. Requires each application to include a partnership agreement between the county, or counties, and one or more local workforce investment boards that outline the actions each party agrees to undertake as part of the project proposed in the application. (Pen. Code, § 1234.3.)

5) Requires, at a minimum, each project proposed in the application to include a provision for an education and training assessment for each individual of the supervised population who participates in the project. (Pen. Code, § 1234.3, subd. (c).)

6) Provides that eligible uses of grant funds include, but are not limited to, vocational training, stipends for trainees, and earn and learn opportunities for the supervised population. States that supportive services and job readiness activities are to serve as bridge activities that lead to enrollment in long-term training programs. (Pen. Code, § 1234.3, subd. (d).)

7) Provides application requirements and specifies preferences for applications that meet certain criteria. (Pen. Code, § 1234.3 subd. (e), (f).)

8) Requires the CWDB to report to the Legislature the outcomes from the grant program, as specified. (Pen. Code, § 1234.4.)

9) Repeals the grant program on January 1, 2021, unless a later enacted statute deletes or extends that date. (Pen. Code, § 1234.5.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "As California's justice system continues to shift it will be important to ensure that people on parole are also able to access similar opportunities to those supported by the Supervised Population Workforce Training Grant. "Additionally, community based organizations that have a track record of success in serving the reentry community understand the unique needs facing this population, and play an important role in facilitating the success of participants and strengthening reentry workforce programs."

2) **Supervised Population Workforce Training Grant Program**: In the Solicitation for Proposals, the CWDB describes the Supervised Population Workforce Training Grant Program as follows:

   "The California Workforce Investment Board (State Board) and the Employment Development Department (EDD) are pleased to announce the availability of up to $825,000 in Recidivism Reduction Funds to implement and support recidivism reduction workforce training and development programs targeting the supervised population. The supervised population includes all persons who are on probation, mandatory supervision, or postrelease community supervision as defined in AB 2060 (Chapter 383, Statutes of 2014) and codified in Penal Code Section 1234(c) and are supervised by, or are under the jurisdiction of, a county. The State Board and EDD will fund proposals that will expand existing, mature collaborative relationships between county based Community Corrections Partnerships (parole, probation, courts, mental health services, community colleges, etc.) and Local Workforce Investment Boards (LWIB) in support of innovative strategies that accelerate educational attainment and reemployment for the supervised population by:

   - Increasing labor market and skills outcomes through the development of strategies that fill gaps, accelerate processes, or customize services to ensure greater access to workforce services and employment opportunities.

   - Implementing promising new modes and practices in workforce system delivery infrastructure and funding alignment that can be replicated across the State and tailored to regional needs.

   - Leveraging State investment with commitments from industry, labor, public, and community partners.

"In addition, the State Board will fund proposals that further advance the goals of California's Strategic Workforce Development Plan 2013-2017 - 'Shared Strategy for a Shared Prosperity' (Strategic Plan) prioritizes regional coordination among key partners, sector-based employment strategies, skill attainment through earn and learn and other effective training models (including, but not limited to apprenticeship), and development of career pathways."
(http://www.cwib.ca.gov/res/docs/AB2060/AB%202060%20SFP%2070001%20FINAL-TR.pdf .)

3) **Realignment and Workforce Training**: On November 4, 2014, voters approved the Safe Neighborhoods and Schools Act, which was a citizen's initiative placed on the ballot as Proposition 47. Proposition 47 made significant changes to the state's criminal justice system by reducing penalties for certain non-violent, nonserious drug and property crimes, and requiring that the resulting savings be spent, among other things, on programs to aid realignment and keep offenders out of prison and jail. In addition, Californians recently approved Proposition 57, which allows for parole consideration of certain non-violent felons. Due to resentencing and increased parole consideration under these propositions, California is expected to see a significant increase in the state prison parole and ex-offender populations, which makes the implementation and expansion of re-entry programs a priority if recidivism is to be avoided among the newly released population. The CWDB has determined that workforce training programs are a key element of reducing recidivism during re-entry and re-entry workforce training programs are most effective with community input. (https://www.doleta.gov/Performance/Results/AnnualReports/PY2013/CA-PY13_WIA_AnnualReport.pdf)

   AB 1114 helps to address the anticipated increase in parole and supervised release populations from realignment by expanding the Supervised Population Workforce Program to include parolees under the jurisdiction of the CDCR. Furthermore, AB 1114 will establish grant preferences for programs that are most effective at reducing recidivism, namely programs that incorporate input from community based organizations, and this will further the goals of California's current realignment strategy.

4) **Argument in Support**: According to *American Friends Service Committee*, "Access to high quality workforce training that addresses the unique needs of the reentry community is key to advancing successful reentry and lowering recidivism rates. Training opportunities for men and women re-entering our communities ensures that they gain job training, education, job readiness skills, and job placement and retention assistance required for securing necessary employment after being released.

   "The Supervised Population Workforce Training Program has begun this work by investing in innovative workforce projects specifically targeted towards this population. By expanding these projects to parole and better integrating community based organizations, AB 1114 will be able to extend and deepen the impact of this work. We also support AB 1114's emphasis on allowing multi-year grants and prioritizing earn and learn activities. This will enable projects to develop over time and rollout services proven to be effective with supervised populations.

   "The bottom line is public safety. Creating innovative models that provide all people under criminal justice supervision with access to comprehensive workforce services is essential to

realizing the promise of California's recent efforts to permanently reduce the number of residents incarcerated or under parole or probation supervision. By investing in the people of California and ensuring everyone has the opportunity to contribute and thrive, we can secure a more prosperous future."

5) **Related Legislation**: AB 1111 (E. Garcia), would establish the Removing Barriers to Employment Act, which includes a provision for funding projects modeled after the Supervised Workforce Training Program.

6) **Prior Legislation**:

   a) AB 2061 (Waldron), Chapter 100, Statutes of 2016, required CWDB to give preference to a grant application that proposes participation by one or more employers who have demonstrated interest in employing individuals in the supervised population and required the board to include in its report to the Legislature whether the program provided training opportunities in areas related to work skills learned while incarcerated.

   b) AB 1093 (E. Garcia), Chapter 220, Statutes of 2015, revised the criteria for the grant program to address the needs of populations with differing levels of education, authorized the State CWDB to delegate the responsibility for determining the sufficiency of a prior assessment to one or more local workforce investment boards, and required additional information to be included in a report to the Legislature, regarding the effectiveness of programs for the individuals served.

   c) AB 2060 (V.M. Perez), Chapter 383, Statutes of 2014, established the Supervised Population Workforce Training Grant Program.

REGISTERED SUPPORT / OPPOSITION:

Support

Communities United for Restorative Youth Justice (Co-sponsor)
PolicyLink (Co-sponsor)
A New Way of Life Re-Entry Program
Alliance for Boys and Men of Color
American Friends Service Committee
Anti-Recidivism Coalition
Brightline Defense
California Coalition for Women Prisoners
California Immigrant Policy Center
Center for Employment Opportunities
Fathers and Families of San Joaquin
Fresno Barrios Unidos
Roberts Enterprise Development Fund (REDF)
Root and Rebound Reentry Advocates
Silicon Valley De-Bug
Social Justice Learning Institute
Urban Strategies Council
W. Haywood Burns Institute

Western Center on Law and Poverty
Youth Justice Coalition

Opposition

None

Analysis Prepared by: Adam Smith / PUB. S. /

Date of Hearing: April 4, 2017
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1115 (Jones-Sawyer) – As Introduced February 17, 2017

SUMMARY: Allows defendants sentenced to prison for a felony that, if committed after enactment of Criminal Justice Realignment legislation in 2011, would have been eligible for county-jail sentencing to obtain an expungement. Specifically, **this bill**:

1) Makes convictions for realigned felony offenses, but which were committed prior to the enactment of Realignment, eligible for expungement.

2) Applies to petitioners seeking to dismiss a conviction for a nonserious, nonviolent, or nonsexual offense for which he or she would have been sentenced to county jail pursuant to criminal justice realignment, but was sentenced to state prison because he or she was sentenced before the implementation of realignment.

3) Provides that the court, in its discretion and in the interests of justice, may grant the expungement relief only after the lapse of two years following the petitioner's completion of the sentence, provided that the petitioner is not under supervised release or is not serving a sentence for, on probation for, or charged with the commission of any offense.

4) Allows the petitioner to make the application and the change of plea in person, or through an attorney, or a probation officer authorized in writing.

5) Provides that in any subsequent prosecution of the petitioner for any offense, a conviction dismissed pursuant to the relief provided for by this bill shall have the same effect as if it had not been dismissed.

6) Provides that a conviction dismissed by the relief provided for by this bill does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for any state or local license, or for contracting with the California State Lottery Commission.

7) Provides that the expungement relief of a conviction does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction for such ownership or possession.

8) Provides that the expungement relief does not permit a person prohibited from holding public office as a result of the dismissed conviction to hold public office.

9) Allows the court to charge up to $150 for a petition for expungement to cover actual costs. However, the court must consider the petitioner's ability to pay.

10) Prevents the court from granting the expungement relief unless the prosecuting attorney has been given 15 days' notice of the petition.

11) Provides that if the prosecutor fails to appear and object to the petition for dismissal, then the prosecutor may not move to set aside or otherwise appeal the granting of relief.

EXISTING LAW:

1) Authorizes a court to grant expungement relief, with specified exceptions, for a misdemeanor or felony conviction for which the sentence included a period of probation if the petitioner is not serving a sentence for, on probation for, or charged with the commission of any offense. (Pen. Code, § 1203.4, subd. (a).)

2) Authorizes a court to grant expungement relief, with specified exceptions, for a misdemeanor conviction for which the sentence did not include a period of probation, or for an infraction conviction, if the petitioner is not serving a sentence for, on probation for, or charged with the commission of any offense. (Pen. Code, § 1203.4a, subd. (a).)

3) Allows the court to grant expungement relief for a conviction of a petitioner sentenced to county jail pursuant to criminal justice realignment if specified conditions are satisfied. (Pen. Code, § 1203.41.)

4) Allows the court to grant expungement relief for a conviction of solicitation or prostitution, if the petitioner can establish by clear and convincing evidence that the conviction was a result of his or her status as a victim of human trafficking. (Pen. Code, § 1203.49.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Where there are barriers to housing, employment, education and other opportunities for economic stability, the likelihood of recidivism increases. It is therefore necessary to create pathways for individuals to expunge old criminal convictions after all terms of punishment have been met. Although previous legislation has reduced some of the challenges and barriers to housing and employment, those who committed their offenses prior to Realignment, are still barred from cleaning-up their records.

   "AB 1115 will address this concern by allowing a court to determine whether an individual convicted of a Realignment offense, prior to 2011 and who would have fallen under Realignment, should be granted expungement relief. Ultimately, this bill will help further reduce recidivism, building upon statewide efforts to assist those who have served their time and proven their willingness to be productive, contributing, law-abiding members of society."

2) **Expungement Relief Generally**: Defendants who have successfully completed probation (including early discharge) can petition the court to set aside a guilty verdict or permit withdrawal of the guilty or nolo contendere plea and dismiss the complaint, accusation, or information. (Pen. Code, § 1203.4.) Defendants who have successfully completed a

conditional sentence also are eligible to petition the court for expungement relief under Penal Code Section 1203.4. (*People v. Bishop* (1992) 11 Cal.App.4th 1125, 1129.) Penal Code Section 1203.4 also provides that the court can, in the furtherance of justice, grant this relief if the defendant did not successfully complete probation. (Penal Code Section 1203.4; see *People v. McLernon* (2009) 174 Cal.App.4th 569, 577.)

When relief is granted under Penal Code section 1203.4, the conviction is set aside and the charging document is dismissed. However, this neither erases nor seals the record of conviction. Despite the dismissal order, the conviction record remains a public document. (*People v. Field* (1995) 31 Cal.App.4th 1778, 1787.)

Expungement relief pursuant to Penal Code Section 1203.4 does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question in any questionnaire or application for public office or for licensure by any state or local agency. (See e.g., Bus. & Prof. Code, §§ 475, 480, 490; Ed. Code, § 44009; *People v. Vasquez* (2001) 25 Cal.4th 1225, 1230.) If the employer is an entity statutorily authorized to request criminal background checks on prospective employees, the background check would reveal the expunged conviction with an extra entry noting the dismissal on the record. On the other hand, except as specified, employers cannot consider a conviction dismissed under Penal Code section 1203.4 in hiring decisions. (Lab. Code, § 432.7.)

Expungement also does not prevent the conviction from being pleaded and proved just like any other prior conviction in any subsequent prosecution. (See *People v. Diaz* (1996) 41 Cal.App.4th 1424.)

Expungement relief is not available for convictions of certain offenses. These include most felony child molestation offenses, other specific sex offenses, and a few traffic offenses. (Pen. Code, §§ 1203.4 and 1203.4a.)

Expungement was originally available only when a defendant was placed on probation. However, expungement relief has been extended to other categories of cases. First the relief was extended to misdemeanants who were not granted probation. (Pen. Code, § 1203.4a.) After the enactment of Realignment, expungement was extended to persons sentenced for a realigned felony who served their sentence in county jail. (Pen. Code, § 1203.41.) This bill extends expungement relief to those persons who were convicted of the same crimes eligible for expungement under Penal Code section 1203.41, but who served their sentence in state prison instead of county jail because they were sentenced before the enactment of Realignment.

3) **Criminal Justice Realignment**: Criminal justice realignment created two classifications of felonies: those punishable in county jail and those punishable in state prison. Realignment limited which felons can be sent to state prison, thus requiring that more felons serve their sentences in county jails. The law applies to qualified defendants who commit qualifying offenses and who were sentenced on or after October 1, 2011. Specifically, sentences to state prison are now mainly limited to registered sex offenders and individuals with a current or prior serious or violent offense. In addition to the serious, violent, registerable offenses eligible for state prison incarceration, there are approximately 70 felonies which have been specifically excluded from eligibility for local custody (i.e., the sentence for which must be

served in state prison).

4) **Need for this Bill**: As a matter of fundamental fairness, this bill extends the opportunity to obtain expungement for the same offenses for which a person is currently entitled to petition for expungement after realignment. As the law currently stands, an equal protection argument might be made by a person who was sentenced to state prison for the same offense that is now eligible for expungement.

   The concept of equal protection recognizes that persons who are similarly situated with respect to a law's legitimate purposes must be treated equally. Accordingly, the first prerequisite to a claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. This initial inquiry is not whether persons are similarly situated for all purposes, but whether they are similarly situated for purposes of the law challenged. (*People v. Brown* (2012) 54 Cal.4th 314.)

   The courts have used a three-tier system in order to determine whether a statute violates the equal protection clause: strict scrutiny, intermediate scrutiny, and minimal scrutiny. Where legislation does not burden a suspect class or a constitutionally protected right, then the legislative act faces minimal scrutiny. Equal protection of the law is denied only where there is no "rational relationship between the disparity of treatment and some legitimate governmental purpose." (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881.) Under the minimal level of equal protection analysis, great deference is given to legislative determinations. (*Id.* at p. 887.) "A state may provide for differences as long as the result does not amount to invidious discrimination. Equal protection … require[s] that a distinction made have some relevance to the purpose for which the classification is made." (*People v. Cruz* (2012) 207 Cal.App.4th 664, 675, citations omitted.)

   The question would be whether there is a rational basis to preclude persons convicted of the same offense as ones who can currently obtain expungement relief because the person served his or her sentence in state prison rather than county jail since a county-jail sentence was not an option at the time of sentencing. Expungement is available to some persons but not others who have committed the same offense based on the date of conviction and place of incarceration. This bill addresses that concern.

5) **Argument in Support**: According to *Californians for Safety and Justice*, the sponsor of this bill, "For many individuals convicted of a crime, there are consequences that continue beyond their incarceration or probation. The permanency of a criminal record can make it difficult for rehabilitated individuals to obtain a decent paying job, qualify for secure and safe housing or pursue their educational goals. This is because many employers, landlords and other entities often exclude individuals that have a prior criminal conviction. There are actually over 4,000 different ways in which a criminal record operates as a barrier for those who have had a felony conviction in California today. These barriers have been shown to statistically increase the likelihood of recidivism when people trying to survive cannot pursue lawful means for reintegrating into society.

   "In 2011, Governor Brown signed into law Criminal Justice Realignment legislation ("Realignment"). Realignment allows individuals convicted of certain crimes and who do not have a disqualifying prior conviction to serve their sentence in a county jail or under local

community supervision rather than in state prison.

"In 2014, Governor Brown signed into law Assembly Bill 651 which allows individuals convicted of a Realignment Offense and sentenced to local custody to petition for expungement of that criminal conviction. Since California's expungement laws predate Realignment, those sentenced under the new Realignment structure were not eligible for expungement. Thus, AB 651 was a means to bridge this gap creating a pathway for expungement for those convicted and sentenced under Realignment.

"AB 1115 seeks to close another gap within Californian expungement law. While individuals convicted of a Realignment Offense after Realignment are eligible for expungement, those convicted of the same offenses prior to Realignment cannot currently receive that relief. AB 1115 will make Realignment convictions predating Realignment eligible for expungement under judicial discretion. Providing this remedy will increase housing, employment and educational opportunities for people with older criminal records while ensuring that courts still have the discretion necessary to determine eligibility."

6) **Argument in Opposition**: According to the *California Police Chiefs Association*, "Currently, pursuant to PC 1203.4, a defendant who was placed on probation for a conviction may have that conviction expunged. A conviction for which a defendant was sentenced to prison (which necessarily means that probation was denied) cannot be expunged. PC 1203.4 applies only to defendants admitted to probation. (*People v. Borja* (1980) 110 Cal.App.3d 378; *People v. Mendez* (1991) 234 Cal.App.3d 1773.)

"Realignment already presents daunting challenges, but they are challenges law enforcement is prepared to address. The impact of AB 1115 will be to change the rules of realignment by permitting the outright expunging of crimes of those felons who committed their crimes prior to the passage of AB 109 and which were sufficiently serious to cause their incarceration in the first place."

7) **Related Legislation**: AB 728 (Waldron) would make a defendant convicted of elder abuse ineligible for expungement. AB 728 is pending hearing in this Committee today.

8) **Prior Legislation**:

   a) AB 1585 (Alejo), Chapter 708, Statutes of 2014, allows a person who has been convicted of solicitation or prostitution to petition for an expungement if he or she can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.

   b) AB 651 (Bradford), Chapter 787, Statutes of 2013, allows a court to grant expungement relief for a conviction of a petitioner sentenced to county jail pursuant to criminal justice realignment if specified conditions are satisfied.

   c) AB 1384 (Bradford), Chapter 284, Statutes of 2011, allows a court to grant expungement relief to a defendant who has been convicted of an infraction or misdemeanor but not granted probation.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians for Safety and Justice (Sponsor)
American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Catholic Conference
California Public Defenders Association
Contra Costa County Defenders Association
Further the Work
Human Impact Partners
Los Angeles Regional Reentry Partnership
Reentry Solutions Group
Rubicon Programs
Social Justice Learning Institute

Opposition

California Police Chiefs Association

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